

LOCAL  
GOVERNMENT LAW  
AND  
ADMINISTRATION

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VOLUME IX







# LOCAL GOVERNMENT LAW AND ADMINISTRATION IN ENGLAND AND WALES

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A LORD OF APPEAL IN ORDINARY

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**COMPUTERISED**

VOLUME IX

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to

OFFICERS OF LOCAL AUTHORITIES



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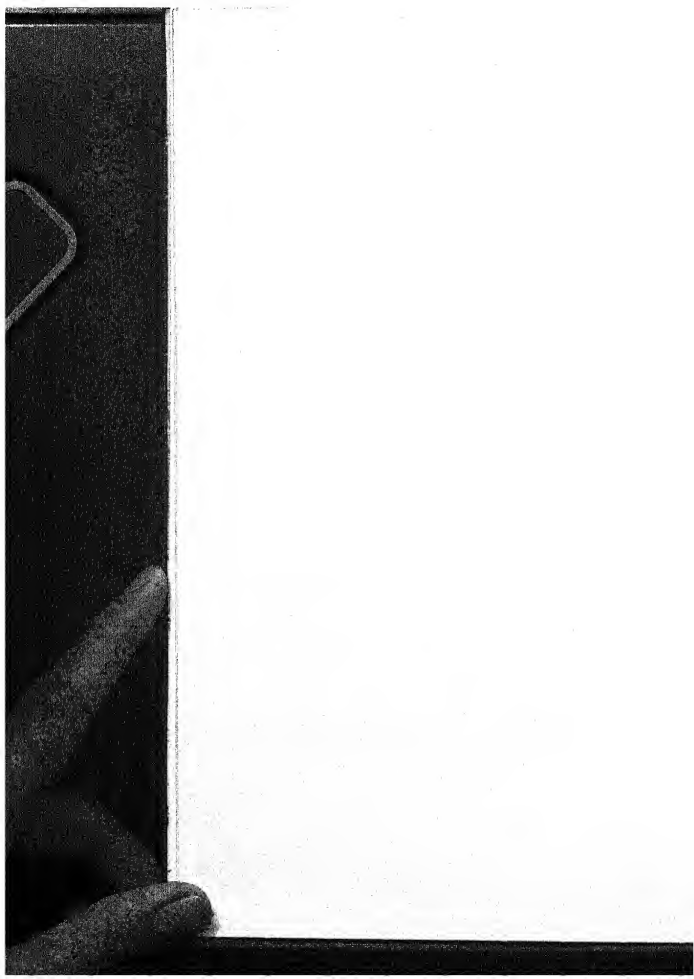
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#### NOTE

The Law in this Volume is, in general, stated as at April 1st, 1937, but it has been thought advisable to base references on the Public Health Act, 1936, which comes into operation on October 1st, 1937.

#### THE ENGLISH AND EMPIRE DIGEST

In addition to the usual citation of the reports of cases in the footnotes, there will be found a reference to the volume, page, and case number at which the case appears in the Digest. Thus:

*Burton v. Bevan*, [1908] 2 Ch. 240; 9 Digest 498, 3270.

#### HALSBURY'S COMPLETE STATUTES OF ENGLAND

References to Public Acts of Parliament are followed by a reference to the volume and page at which the Act or section of the Act appears in Halsbury's Complete Statutes of England. Thus:

The Local Government Act, 1933; 26 Halsbury's Statutes 295.

#### ALL ENGLAND LAW REPORTS

After cases heard since February, 1936, references are given to this series of reports thus:

*Skilton v. Epsom and Ewell U.D.C.*, [1936] 2 All E. R. 50.

# MEDICAL OFFICER OF HEALTH

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## See also titles :

ARTIFICIAL CREAM ;  
 BUTTER, MARGARINE AND CHEESE ;  
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 CELLAR DWELLINGS ;  
 CONDENSED MILK ;  
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 CREMATION ;  
 DISINFECTION ;  
 FOOD AND DRUGS ;  
 FRUIT AND HOP PICKERS ;  
 HOSPITALS ;  
 HOUSING ;  
 IMPORTED FOOD ;  
 INFECTIOUS DISEASES ;  
 LODGING-HOUSES ;  
 MATERNITY AND CHILD WELFARE ;  
 MIDWIVES ;  
 MILK AND DAIRIES ;  
 NUISANCES ;

NURSING HOMES ;  
 OFFENSIVE TRADES ;  
 POISONS ;  
 POLLUTION OF RIVERS ;  
 POOR LAW MEDICAL OFFICERS ;  
 PORT HEALTH AUTHORITIES ;  
 PUBLIC HEALTH ;  
 RAG FLOCK ;  
 RATS AND MICE ;  
 SAMPLING OF FOOD AND DRUGS ;  
 SHELL FISH, CLEANSING OF ;  
 SLAUGHTER HOUSES AND KNACKERNS'  
 YARDS ;  
 SMOKE ABATMENT ;  
 TENTS, SHEDS AND VANS ;  
 UNSOUND FOOD ;  
 VACCINATION ;  
 VENEREAL DISEASES.

## 1. INTRODUCTION

A county M.O.H. must be appointed by every county council under sect. 108 of L.G.A., 1933 (*a*), and an M.O.H. must be appointed by every borough council or district council under sect. 106 or sect. 107 of that Act (*b*). The P.H.A., 1848 (*c*), gave power to local boards of health to appoint medical officers of health, but it was not until the P.H.A., 1872 (*d*), operated, that local authorities of urban and rural areas were compelled to appoint medical officers of health. The L.G.A., 1888, created a county council for each administrative county, and sect. 17 of that Act (*e*) allowed a county council to appoint a county M.O.H., but it was not until the Housing and Town Planning, etc., Act, 1909, operated, that the appointment of a county M.O.H. became obligatory upon a county council (*f*). The Act of 1888 also created a new class of local authority, namely, the county borough council, and the M.O.H. of a county borough performs executive duties similar to those of the M.O.H. of a borough as well as those of a county medical officer. Under sect. 287 of the P.H.A., 1875 (*g*), as amended by sect. 8 of the P.H. (Ships, etc.), Act, 1885 (*h*), the M. of H. may by order constitute any local authority whose district or part thereof abuts on a port, or part of a port, a port sanitary authority and may combine two or more riparian authorities to form a port sanitary authority. Such an order usually requires the port sanitary authority to appoint an M.O.H. In practice the M.O.H. of the port sanitary authority is generally the M.O.H. of the local authority or of one of the constituent authorities, as the case may be. When the P.H.A., 1936, comes into operation on October 1, 1937, the

(*a*) 26 Halsbury's Statutes 360.(*b*) *Ibid.*, 361, 362.(*c*) 11 & 12 Vict. c. 63. Repealed by P.H.A., 1875.(*d*) 35 & 36 Vict. c. 79. *Ibid.*(*e*) 10 Halsbury's Statutes 690.(*f*) See Act of 1909, s. 68 (1) ; 10 Halsbury's Statutes 846.(*g*) 13 Halsbury's Statutes 745.(*h*) *Ibid.*, 806.

enactments last mentioned will be superseded by sect. 2 of that Act, and sect. 5 of the Act alters the name of existing port sanitary authorities, and all these authorities are to be styled port health authorities, as are any new authorities constituted under sect. 2 of the Act.

In this way it comes about that there are county medical officers of health appointed by the county councils, borough medical officers of health appointed by borough councils, urban and rural district medical officers of health appointed by the urban and rural district councils, and port medical officers of health appointed by the port health authorities.

On a representation being made to him, the M. of H. may unite districts (i) for the purpose of appointing an M.O.H., and the order may contain provisions as to the mode of appointment and removal of the officer, expenses and salary of the appointment and any other matters which in the opinion of the Minister require regulation (k). [1]

The duties of an M.O.H. comprise duties imposed by Acts of Parliament, or by regulations of the M. of H. and such other duties as the local authority may see fit to assign to him. The M.O.H. may be also the school medical officer and the administrative tuberculosis officer for the area, and generally is regarded as the chief medical officer of the local authority, and it falls to him to advise the local authority on all health matters, including environmental and personal hygiene as well as curative and preventive medicine. In large areas he carries considerable responsibilities, not the least of which is the organisation of the health department and the responsibility for the many and various institutions for the sick which may be under the control of the council. The nature of his organisation for the efficient supervision and control of the health department is subject to the council's approval. The kind of organisation to be established will depend on the size of the health department, which again will depend on the number of inhabitants of the area, the character of the population and the health functions which the local authority may administer. Many officers are appointed to assist the M.O.H. in the performance of his duties, including medical superintendents, tuberculosis medical officers, venereal disease medical officers, public vaccinators, district medical officers, maternity and child welfare medical officers, dental surgeons, veterinary surgeons, sanitary inspectors and health visitors. The general administration of the medical work is carried out by the M.O.H. who will advise the council as to the best utilisation and classification of the various hospitals and clinics under their control, and as to the need for extension or the provision of new institutions for the sick. A medical superintendent (see title MEDICAL SUPERINTENDENT) is usually appointed to take charge of a hospital or a group of hospitals, but his responsibilities are limited to the institution or institutions to which he is appointed. Services under the general control of the M.O.H., such as the maternity and child welfare service or the tuberculosis service, may similarly be under the particular charge of a special medical officer. Environmental hygiene, including general sanitary work and housing, also comes within the scope of the work of the health department for which the M.O.H. is responsible. A chief

(i) "District" means a county borough, or non-county borough, or urban or rural district; L.G.A., 1933, s. 112; 26 Halsbury's Statutes 366.

(k) *Ibid.*; 26 Halsbury's Statutes 366.

sanitary inspector or a chief housing inspector is usually appointed in charge of such sections. The work of the staff of health visitors is again usually directed by a chief health visitor responsible to the M.O.H.

There is much work in a health department, which, though founded on medical principles, is nevertheless not of a clinical character. It is, therefore, desirable that the M.O.H. should be assisted in large areas in the discharge of his duties by an experienced lay administrative officer who can keep the necessary records. Such an officer, subject to the control of the M.O.H., usually prepares the statistical information required for the annual and special reports of the M.O.H., and such financial statements as may be necessary for the preparation of the annual estimates and the control of the expenditure of the department throughout the year. He also keeps records of the minutes and directions of the council bearing upon the work of the health department and the control of the staff.

The M.O.H. should work in close harmony with the voluntary agencies operating for health in his area and co-ordinate as far as possible their activities with those of the local authority. He should also keep in touch with the local members of the medical profession, so that he may obtain early knowledge of outbreaks of disease or other conditions affecting or likely to affect the health of the inhabitants. Having regard to all these circumstances and responsibilities the M.O.H. may be properly defined as the officer charged with the duty of co-ordinating all health functions within his area and the work of the various hospitals and other medical institutions under the control of the local authority. [2]

## 2. CONDITIONS OF APPOINTMENT

**Qualifications.**—A person is not to be appointed as a county M.O.H. unless he is a duly qualified medical practitioner and registered in the medical register as the holder of a diploma in sanitary science, public health or state medicine (l). The qualification first mentioned is required for an appointment as M.O.H. of any borough or district by sect. 108 (3) of L.G.A., 1933 (m), and the second qualification is by the same provision necessary for an appointment as M.O.H. of a borough or district with a population of 50,000 or more, but by sect. 108 (1) of the Act the M. of H. is empowered to prescribe the qualifications of all medical officers of health of boroughs and districts. The Minister has prescribed (n) that any medical officer appointed in future must, in addition to any statutory qualification, be registered in the medical register as the holder of a diploma in sanitary science, public health or state medicine. Art. 29 of the regulations reserves power to the Minister to dispense with the regulations. In the absence, therefore, of a special dispensation any M.O.H. of a borough or district appointed in future must possess the same minimum qualifications as a county M.O.H. [3]

**Restrictions on Private Practice.**—By sect. 108 (6) of L.G.A., 1933 (o), a county M.O.H. is forbidden to engage in private practice; nor can he

(l) L.G.A., 1933, s. 103 (2); 26 Halsbury's Statutes 360.

(m) 26 Halsbury's Statutes 363.

(n) Sanitary Officers (Outside London) Regulations, 1935, art. 8; S.R. & O., 1935, No. 1110.

(o) 26 Halsbury's Statutes 361.

hold any other public appointment without the consent of the M. of H.

As respects medical officers of health of non-county boroughs or districts, sect. 58 of L.G.A., 1929 (*p*), imposed on county councils the duty, after consultation with the councils of non-county boroughs and districts, of formulating a scheme by a combination of areas or otherwise, whereby every M.O.H. subsequently appointed should be restricted from engaging in private practice as a medical practitioner, such scheme to be submitted to the M. of H. If the county council failed to do so, the Minister might formulate a scheme. The Minister might, however, dispense with the requirement as to not engaging in private practice on such conditions as he might think fit. These provisions were reproduced in sect. 111 of L.G.A., 1933 (*g*), and sect. 58 of the Act of 1929 was repealed. [4]

**Filling of Vacancies.**—A borough or district council must fill a vacancy in the office of M.O.H. within six months or such longer period as the M. of H. may, in any particular case, permit, after its occurrence (*r*). There seems to be no similar provision as to filling a vacancy in the office of county M.O.H. The mode of appointment and terms as to salary and tenure of office of medical officers of health of boroughs and districts are prescribed by regulations made by the M. of H. (*s*). Arts. 8 and 17 of the regulations apply in all cases, but arts. 9—16 are only obligatory if the council receive from the county council a repayment of one-half of the salary of the M.O.H. (*s*), and also where the M.O.H. is appointed for a united district (*t*), and a similar repayment is made. The regulations also extend to an M.O.H. appointed by a port health authority, subject to similar restrictions (*u*), and the reference to a county council making repayment includes a county borough council making repayment.

Where the regulations apply, the council, before appointing an M.O.H. must submit to the M. of H. a statement giving the particulars required by him. When the Minister has given his approval to the proposals, an advertisement must be inserted in the newspapers notifying the appointment to be made, the salary and other allowances, and inviting applications for the post. The person appointed by the council must be approved by the Minister (art. 9).

A member of the council, or a person who has ceased to be a member of the council within twelve months, is disqualified for appointment in all cases by sect. 122 of L.G.A., 1933 (*a*). [5]

**Tenure of Office.**—A county M.O.H. cannot be appointed for a limited period only; he holds office during the pleasure of the county council; but the consent of the M. of H. is required to his dismissal (*b*).

Where one-half of the salary of a M.O.H. for a borough or district is repaid by the county council and art. 12 of the Sanitary Officers (Outside London) Regulations, 1935, applies, and the M.O.H. by the

(*p*) 10 Halsbury's Statutes 923.

(*q*) 26 Halsbury's Statutes 365.

(*r*) L.G.A., 1933, ss. 106 (4), 107 (3); 26 Halsbury's Statutes 362.

(*s*) *Ibid.*, s. 108. See Sanitary Officers (Outside London) Regulations, 1935; S.R. & O., 1935, No. 1110.

(*t*) See *ante*, p. 3.

(*u*) See art. 7 (3), and P.H.A., 1936, Sched. I.; 20 Halsbury's Statutes 543.

(*a*) 26 Halsbury's Statutes 371.

(*b*) L.G.A., 1933, s. 103 (3); 26 Halsbury's Statutes 360.

terms of his appointment is not required to devote the whole of his time to public health duties, he can only be appointed for a specified period ending on the 31st day of March next following his appointment, and the appointment may be determined at any time without notice by the Minister or by the council with the consent of the Minister.

But if the M.O.H. is to be restricted by the terms of his appointment from engaging in private practice, he must be appointed without limit of time and cannot be dismissed from office without the consent of the Minister (c). This condition as to dismissal with the sanction of the Minister also extends to any M.O.H. of a county borough, to the council of which, before it was constituted a county borough, there was paid, either out of moneys voted by Parliament or by the county council, a portion of the salary of the M.O.H. of the borough (*ibid.*). Under art. 13, the council of a borough or district may suspend a M.O.H. from the discharge of his duties, but must report his suspension and the cause to the M. of H., who may direct the suspension to be determined, and the medical officer then resumes duty forthwith (c).

Where repayment is received and art. 16 of the regulations applies, the terms of the engagement of a M.O.H. cannot be varied without the consent of the Minister. [6]

**Remuneration.**—A county council may pay to the county M.O.H. such reasonable salary as they may determine (d), and the approval of the M. of H. to the salary is not required.

Where repayment is received and art. 15 of the regulations applies, a borough or district council must pay to their M.O.H. such salary as may from time to time be approved by the Minister, and the proviso to the article allows the council, with the Minister's approval, to pay the medical officer a reasonable gratuity for extraordinary services or in other unforeseen or special circumstances. [7]

### 3. DUTIES

In dealing with the duties of an M.O.H. it must be borne in mind that his duties are either statutory duties, or arise under the regulations or directions of the M. of H. or under bye-laws or instructions of the local authority applicable to his office. In many instances these directions are not explicit, but are created by the general implication of his appointment that he should take all such steps as may be necessary to safeguard the health of the inhabitants of his area. Such steps as he may take which are not the subject of specific instructions as aforesaid, are necessarily subject to the approval of the council on whose behalf he acts. [8]

**County Medical Officer.**—The county M.O.H. must perform such duties as may be prescribed by the M. of H. and such other duties as may be assigned to him by the county council (c). The duties so prescribed are set out in art. 6 of the Sanitary Officers (Outside London) Regulations, 1985 (f), which requires a county M.O.H. to inform himself of all matters affecting, or likely to affect, public health in the county and to be prepared to advise the county council on any such

(c) L.G.A., 1933, s. 110; 26 Halsbury's Statutes 364.

(d) *Ibid.*, s. 103 (1); *ibid.*, 360.

(e) *Ibid.*, s. 103 (4); *ibid.*

(f) S.R. & O., 1985, No. 1110.

matter. For this purpose he is to visit the several non-county boroughs and districts in the county as occasion may require. He is also to perform all duties imposed on him by statute, or by orders, regulations or directions of the Minister. Further duties as to reports are prescribed by art. 6 (see *post*, pp. 39, 42).

By art. 165 (2) of the Public Assistance Order, 1930 (g), a county M.O.H. is required to advise the council on public health and other medical questions arising in connection with the discharge of poor law functions.

From the point of view of general sanitation, house inspection, slum clearance, etc., the duties of the county M.O.H. are largely supervisory in character, this supervision being maintained by periodic surveys made by him together with the county sanitary officers. In addition, frequent special visits are made by the county M.O.H. either on his own initiative following upon complaints of conditions alleged to exist which might be injurious to health, or at the request of a local council or the M.O.H. of a borough or district.

In other respects he acts as a co-ordinating officer in matters affecting the public health of the county. He receives a weekly return from each local M.O.H. of the number of cases of the notifiable diseases that have occurred in each sanitary district (h). These returns are summarised, and he is able to see at a glance where any unusual incidence of epidemic disease is prevalent, and in such cases he will call for a report from the local M.O.H. or he may actually visit the area. From these reports he is able to keep medical officers of health of neighbouring areas informed as to the prevalence of infectious disease in different parts of the county. For example, where an outbreak of typhoid fever occurs the origin of which is an infected water or milk supply, the infected water or milk may be distributed to communities inhabiting two or three sanitary districts, and possibly including a county borough. In such a case the county M.O.H. will endeavour to prevent the spread of infection by writing to the M.O.H. for any area likely to be affected, and possibly by a special visit to the locality. On an outbreak of smallpox the county M.O.H. must keep himself informed of the movement of contacts from one area to another and give the local M.O.H. all information which is likely to assist in the prevention of spread of infection.

At local inquiries held by the M. of H. into applications for sanction to loans for the provision of water supplies, sewage disposal schemes, and into housing and slum clearance schemes, the county M.O.H., or one of his assistants, frequently gives evidence, or supplies information at the request either of the inspector who is holding the inquiry or of the borough or district council making the application or promoting the scheme.

By art. 6 (3) of the Sanitary Officers (Outside London) Regulations, 1935, a county M.O.H. is required to prepare an annual report (i) on the sanitary administration, sanitary circumstances and vital statistics of the county, and he in turn is furnished with a copy of the annual report of each local M.O.H. in the county. Each of the local reports is carefully scrutinised by the county medical officer, and he extracts comparable data relating to environmental conditions, birth

(g) S.R. & O., 1930, No. 185; 12 Halsbury's Statutes 1078. This duty is also imposed on the M.O.H. of a county borough (*ibid.*)

(h) Sanitary Officers (Outside London) Regulations, 1935, art. 17 (3).

(i) See also *post*, p. 39.

and death rates, incidence and death rates from infectious disease, infantile mortality rates, etc., and in this way by tabular and other statements showing vital statistics in each area of the county, he demonstrates in his report the state of the public health of one area as compared with another, and thereupon takes any action which may appear desirable, in conjunction with the local M.O.H., to improve the health conditions in those areas in which the records are unfavourable.

The administrative machinery of the county council in public health functions, being frequently supervisory rather than executive, principally in connection with general sanitary matters such as water supply, sewerage and sewage disposal and housing, differs to some extent from that of county boroughs, boroughs or districts. In certain directions the powers of county councils and county boroughs are identical, e.g. in matters with which the county council deal directly as the executive authority, and in such cases the duties of the county M.O.H. resemble those of the M.O.H. of a county borough and will be found noted under the appropriate headings. [9]

**Borough or District M.O.H.**—These officers must perform the duties prescribed by the M. of H. and may exercise any of the powers with which a sanitary inspector is invested (*k*). The duties so prescribed are set out in art. 17 of the Sanitary Officers (Outside London) Regulations, 1935, and are imposed on all such officers, whether repayment of one-half of the officer's salary is or is not received from the county council (see art. 7 (2)). The principal duties include the duty to inform himself as far as practicable respecting all matters affecting or likely to affect the public health in the area for which he is appointed and to be prepared to advise the local authority on any such matter; to perform all the duties imposed on a M.O.H. by statute and by any orders, regulations or directions, which may be from time to time made or given by the Minister and by any bye-laws or instructions of the local authority applicable to his office. A duty to send the Minister and to the county M.O.H., if the district is not a county borough, weekly returns of the number of cases of infectious diseases notified and of preparing and circulating an annual report is also imposed. Special reports on serious outbreaks of disease must also be made to the Minister and the county M.O.H. informed unless the borough is a county borough.

By sect. 118 of L.G.A., 1933 (*l*), the M.O.H. of a non-county borough or district is required to give to the county M.O.H. any information, which it is in his power to give, and which that officer may reasonably require, for the purpose of his duties prescribed by the Minister. [10]

**Bye-Laws.**—Local authorities may make bye-laws regulating various matters, subject to the confirmation of the M. of H., and where these relate to public health matters it becomes the duty of the M.O.H. to advise his council as to the necessity or reasonableness of a bye-law. The principal bye-laws affecting the public health, which local authorities make, relate to new buildings; cemeteries and mortuaries; common lodging-houses; nursing homes; offensive trades; the prevention of nuisances; sanitary conveniences; slaughter-houses; and tents, vans, sheds used for habitation. On these bye-laws questions may arise on which the M.O.H. will be asked to advise. [11]

(*k*) L.G.A., 1933, s. 108 (4); 26 Halsbury's Statutes 363.

(*l*) 26 Halsbury's Statutes 367.

**Canal Boats.**—The administration of the Canal Boats Acts, 1877 (*m*), and 1884 (*n*), and the regulations (*o*) made thereunder are enforced and executed by local sanitary authorities, some of whom may also be registration authorities if a canal is within their area. This work is usually assigned by the local authority to a sanitary inspector, acting under the general direction of the M.O.H. The Acts in question will be replaced by Part X. of the P.H.A., 1936, when that Act comes into operation, but the regulations under the Acts will be kept in force by proviso (c) to sect. 346 (1) of the new Act, until they are superseded by regulations made by the Minister under sect. 251 of the Act of 1936. [12]

**Cancer.**—In recent years much attention has been given to the subject of cancer, and the M. of H. have issued circulars and memoranda on this disease (see title CANCER, Vol. II., pp. 404—406). The duties of an M.O.H. are general rather than specific. He should advise his council on propaganda, that is, the preparation and issue of leaflets to the public on cancer, and, subject to the decision of the council, arrange public lectures. He should especially emphasise the need for early diagnosis and early treatment. In some areas, cancer clinics have been established where persons may go to receive medical advice if they suspect themselves to be suffering from cancer, and may be directed to attend a hospital or other institution for further diagnosis or treatment. Where such provision has been made by the council, the M.O.H. supervises the working of the arrangements. [13]

**Cemeteries.**—From time to time the question of the site for a new cemetery comes up for consideration by the local authority (see title CEMETERIES). In such circumstances the M.O.H. is usually required to advise as to the suitability of the site, the possibility of contamination of the domestic water supply, the drainage, the soil and the size, having regard to the present and potential populations of the area. He should also report to the council as to the closure of a burial ground which he considers to be full or insanitary, or as to the discontinuance of burials in a burial ground, if the water supply of the area is likely to be affected. [14]

**Child Life Protection.**—When the P.H.A., 1936, comes into operation the provisions of Part I. of the Children Act, 1908 (*p*), as amended by Part V. of the Children and Young Persons Act, 1932 (*q*), dealing with *infant* life protection, will be replaced by sects. 200—220 of the Act of 1936, which deal with *child* life protection. As these provisions related to children under nine years of age, it was absurd to refer to them as infants. These provisions are to be administered by "the welfare authority," that is to say, by all county borough councils, and, in non-county boroughs or districts, by such county council, borough council or district council as are maternity and child welfare authorities on September 30, 1937; see sect. 200 of the Act.

By sect. 209 (1) of the Act of 1936 (*r*) every welfare authority must from time to time make inquiry whether there are any persons residing

(*m*) 13 Halsbury's Statutes 788.

(*n*) *Ibid.*, 808.

(*o*) See the Canal Boats Regulations, and amending regulations printed at pp. 3088—3095 of Lumley's Public Health, 10th ed.

(*p*) 9 Halsbury's Statutes 795.

(*q*) 25 Halsbury's Statutes 252.

(*r*) Replacing Children Act, 1908, s. 2 (1); 9 Halsbury's Statutes 796.



within their area who undertake the nursing and maintenance of foster children. If any such persons are found, it will be the duty of the welfare authority under sect. 209 (2) to appoint one or more child protection visitors, but they may under the proviso in addition to or in lieu of the appointment of such visitors, authorise one or more suitable persons or a philanthropic society to exercise the powers of child protection visitors. Where the council are a welfare authority, the M.O.H. will generally be responsible to the council for the work of child life protection. His duties will consist in securing that the necessary notifications, as to the intention to receive or the transfer or removal or death of children under nine years of age kept for reward, are duly passed on to him; in advising the council as to the number of children under nine years of age who may be kept in a dwelling with a foster child who is notified; in advising the council as to the removal of children under nine years of age to a place of safety if kept by unfit persons or in unfit premises; and in searching for anonymous advertisements regarding the reception of children under nine years of age to be taken for reward (s).

See also title **INFANT LIFE PROTECTION** at pp. 186—196 of Vol. VII.

[15]

**Common Lodging-Houses.**—The enforcement of the law with regard to common lodging-houses and of bye-laws for their regulation (see title **LODGING-HOUSES**) is usually assigned to the health department. The M.O.H. exercises a general supervision over common lodging-houses in his area and reports to the council any irregularities which may come to his notice. Certain duties are imposed by statute on the M.O.H.; see title **LODGING-HOUSES**, and *post*, p. 19. [16]

**Cremation.**—An M.O.H., if a registered medical practitioner of five years' standing, may be appointed medical referee, or deputy referee, by the Home Secretary under art. 10 of the Cremation Regulations, 1930 (t), and may issue a confirming certificate of death under the regulations. On application for the cremation of a body, the medical referee is required to satisfy himself that all the requirements of the Cremation Act, 1902 (u), and the regulations have been complied with and to give a certificate; see title **CREMATION**. [17]

**Factories, Workshops and Work-places.**—The duties of the councils of boroughs and districts relative to factories, workshops and work-places are set out in a memorandum of the H.O. issued in March, 1912 (x). The principal matters on which the supervision of the M.O.H. is required are those relating to the provision of suitable and sufficient sanitary conveniences in those boroughs and districts in which sect. 22 of the P.H.As. Amendment Act, 1890 (y), is in force, or where this section is not in force, sect. 38 of the P.H.A., 1875 (a). The position will be altered when the P.H.A., 1936, comes into operation, because sect. 46 of that Act, which reproduces sect. 22 of the Act of 1890, will extend to all boroughs and urban districts, and to any rural district or contributory place in which sect. 22 of the Act of 1890 was in force, while sect. 38 of the Act of 1875 will be repealed without re-enactment, with the result that the provision of sanitary conveniences in a rural

(s) Memorandum, L.G.A., No. 28, dated November 26, 1920.

(t) S.R. & O., 1930, No. 1016; 23 Halsbury's Statutes 17.

(u) 2 Halsbury's Statutes 281.

(x) Memorandum of the H.O. as to duties of local authorities; March, 1912.

(y) 13 Halsbury's Statutes 833.

(a) *Ibid.*, 641.

area to which sect. 46 of the new Act does not apply, will be dealt with by the factory inspector under sect. 9 of the Factory and Workshop Act, 1901 (*b*); see sect. 44 (3) of the new Act. In regard to workshops and work-places the duties of the M.O.H. also include the supervision of the sanitary condition of workshops and work-places generally, with particular reference to cleanliness, air space, ventilation and drainage of floors; see sects. 5, 7, 8 of the Act of 1901 (*c*).

If the M.O.H. certifies that it is necessary for the health of the persons employed that a workshop should be lime-washed, cleansed or purified, the local authority may give notice to the owner to carry out the work required, and if the owner fails to do so the local authority may themselves undertake the work (*d*).

A factory (not being a factory to which sect. 1 of the Act of 1901 applies), or a workshop or work-place (1) which is not provided with sufficient means of ventilation, or in which sufficient means of ventilation is not maintained, or (2) which is not kept clean or not kept free from noxious effluvia, or (3) which is so overcrowded while work is carried on as to be prejudicial to the health of the persons employed, may be dealt with under Part III. of P.H.A., 1936, as a statutory nuisance; see sect. 92 (1) (*e*) of the Act (*e*). A workshop in which any process is carried on which renders the floor liable to be wet and which is not provided with adequate means for draining off the wet, is also by sect. 8 (2) of the Act of 1901 made a nuisance liable to be dealt with summarily under the law relating to Public Health. [18]

Domestic factories and workshops are excepted from sect. 7 of the Factory and Workshop Act, 1901, and consequently come within the sphere of the local authorities under sect. 2 of that Act (*f*). The M.O.H., subject to the general direction of the local authority, is as a rule required to exercise the necessary supervision to see that the statutory requirements in respect to such premises are observed.

Special regulations for the sanitary control of bakehouses are included in sects. 97—102 of the Factory and Workshop Act, 1901 (*g*), the enforcement of which, as respects retail bakehouses, is entrusted to the M.O.H., subject to the directions of the local authority. By sect. 98, a local authority are also allowed to prosecute where a bakehouse is alleged to be in such a state as to be on sanitary grounds unfit for use or occupation as a bakehouse. The special duties placed on local authorities, as to the certification of underground bakehouses, are indicated in sect. 101 of the Factory and Workshop Act, 1901 (*h*), and their administration is generally entrusted, subject to the direction of the local authority, to the M.O.H.

The conditions regulating homework are controlled by the local authorities under sects. 107—115 of the Factory and Workshop Act, 1901 (*i*). The object of these provisions is to prevent homework being done in dwellings which are injurious or dangerous to the health of the workers, for example, through overcrowding, want of ventilation

(*b*) 8 Halsbury's Statutes 522.

(*c*) *Ibid.*, 520—522.

(*d*) Factory and Workshop Act, 1901, s. 2 (3), (4); 8 Halsbury's Statutes 518, 519.

(*e*) This provision is based on P.H.A., 1875, s. 91 (6); 13 Halsbury's Statutes 661; and Factory and Workshop Act, 1901, ss. 1 (2), 2 (1) (2); 8 Halsbury's Statutes 517, 518.

(*f*) 8 Halsbury's Statutes 518.

(*g*) *Ibid.*, 566—569.

(*h*) *Ibid.*, 568.

(*i*) *Ibid.*, 572—577.

or other insanitary conditions, or in premises where there is dangerous infectious disease; see title **HOMEWORK**.

If the M.O.H. finds any woman, young person or child employed in a workshop in which no abstract of the Act is posted up, it is his duty under sect. 188 of the Act of 1901 (*k*) to inform the district inspector of factories in writing.

Outworkers' lists are required to be sent to the local authority twice a year, and on receipt of them they are examined by the M.O.H., subject to the directions of the local authority, and the places where the homework is carried on are inspected (*l*). [19]

The register of workshops which is required to be kept by the local authority (*m*) is generally kept by the M.O.H.

It is the duty of the M.O.H. under sect. 132 of the Factory and Workshop Act, 1901 (*n*), to make an annual report to the local authority on the administration of the Act in workshops and work-places, so far as the matters under the charge of the council are concerned, and to send a copy of his report to the Home Secretary. Tabular forms for the purposes of preparing this report are sent to the M.O.H. at the end of each year. These tables are not intended to supersede the report itself in which, among other points, detailed information should be given as to (1) industries of local importance in which "the sweating system" prevails, (2) any action taken by the council to prevent industrial work being carried on in dwellings under less wholesome conditions than are required by law in workshops by sect. 108 of the Act of 1901 (*o*) and otherwise, and (3) as to the mortality statistics of local industries with special reference to dangerous processes and the age and sex of the workers (*p*). In the circular issued annually by the M. of H. on the contents and arrangement of annual reports of M.O.s.H., the Minister asks that copies of the completed tabular form may be sent to the H.O. and the county M.O.H. [20]

**Food.**—The M.O.H. has many responsibilities relative to food with the view of securing as far as legal authority permits the provision of sound and wholesome foodstuffs for the people. [21]

**Imported Food.**—The Public Health (Imported Food) Regulations, 1925 (*q*), and the Public Health (Imported Food) Amendment Regulations, 1933 (*r*), are administered by port health authorities and riparian authorities, but where food is imported by train, ferry, or aircraft, the regulations are administered by the local sanitary authority for the area.

The M.O.H. may examine any article of food after it has been landed within the borough or district, or while it is on board ship or before it has been landed. The powers of the M.O.H. under the regulations as to examination, the taking of samples and the seizure of any article of food which is unfit for human consumption, are set out on p. 138 of Vol. VII.

Part III. of the regulations of 1925, as amended by the regulations of 1933, deals with oversea meat and requires the officer of customs,

(*k*) 8 Halsbury's Statutes 586.

(*l*) Act of 1901, s. 107; 8 Halsbury's Statutes 572.

(*m*) *Ibid.*, s. 131; *Ibid.*, 586.

(*n*) 8 Halsbury's Statutes 586.

(*o*) *Ibid.*, 578.

(*p*) Memorandum of the H.O. as to duties of local authorities; March, 1912.

(*q*) S.R. & O., 1925, No. 273.

(*r*) S.R. & O., 1933, No. 347.

if it appears to him that any oversea meat should be examined by the M.O.H., to give notice to the master of the ship or to the importer ordering its detention at a specified place. He must at the same time inform the M.O.H. of the effect of the notice, who must forthwith examine the meat in question. If upon the examination, the M.O.H. is of opinion that such oversea meat comprises "conditionally admissible meat" without an official certificate, or "prohibited meat" (s) he forbids in writing the removal of the meat for any purpose except exportation and notifies the sanitary authority and customs officer accordingly. If on the other hand the M.O.H. is of opinion that the oversea meat does not comprise such meat as aforesaid or any meat unfit for human consumption he may authorise the removal of the meat and give a copy of such authorisation to the customs officer.

As to the course to be adopted where the removal of meat is forbidden except for exportation, see pp. 138, 139 of Vol. VII. [22]

*Preparation or Storage of Food.*—Sect. 72 of P.H.A., 1925 (t), lays down the conditions under which food may be prepared for sale, sold or stored in any room to which the Factory and Workshop Act, 1901, as amended by any later enactment or any regulation made under the P.H. (Regulations as to Food) Act, 1907 (u), does not apply. It is the duty of the M.O.H., sanitary inspector and any other officer authorised by the local authority in writing to cause inspections to be made of rooms to which this section extends and to see that its requirements are carried out. [23]

*Unsound Food.*—Any M.O.H. or sanitary inspector has the right at all reasonable times to inspect and examine any animal, carcase, meat, poultry, game, flesh, fish, fruit, vegetables, corn, bread, flour or milk exposed for sale or deposited in any place for the purpose of sale, or of preparation for sale, and intended for the food of man (a). If sect. 28 of the P.H.As. Amendment Act, 1890 (b), has been adopted or put in force by order, the power is extended to all articles intended for the food of man, sold or exposed for sale, or deposited in any place for the purpose of sale, or of preparation for sale. The inspecting officer may seize food which appears to him diseased, unsound or unwholesome, or unfit for the food of man and take it before a justice who, if he concurs in the officer's opinion, must condemn it and order it to be destroyed or otherwise disposed of so that it shall not be used for human consumption (c). Properly worded condemnation orders should be available in the office of the health department for use when required. The M.O.H. should see that proper arrangements are made for the destruction of the article (d). In practice the sanitary inspector usually does the work of examination, but if in doubt as to the soundness of food reports to the M.O.H. and obtains his advice (e). It is always advisable for the M.O.H. to see any diseased meat or unsound food

(s) These terms are defined in the schedules to the amending regulations of 1933.

(t) 13 Halsbury's Statutes 1148.

(u) 8 Halsbury's Statutes 562.

(a) P.H.A., 1875, s. 116; 13 Halsbury's Statutes 672.

(b) 13 Halsbury's Statutes 535.

(c) P.H.A., 1875, s. 117; *ibid.*, 673.

(d) Where s. 28 of the Act of 1890 is in force, a justice may condemn any article of food and order it to be destroyed or disposed of, if satisfied on complaint being made to him that it is diseased, unsound, etc., although it has not been seized.

(e) Sanitary Officers (Outside London) Regulations, 1935 (S.R. & O., 1935, No. 1110), proviso to art. 27 (5).

before it is destroyed so that he may be in a position to give evidence in the event of legal proceedings. [24]

**Food and Drugs.**—The Food and Drugs (Adulteration) Act, 1928 (*f*), and various regulations govern the sale of food and drugs; see title **FOOD AND DRUGS**. Their object is to secure as far as possible that no article of food or any drug is sold which is not of the nature, substance or quality demanded by the purchaser. To this end, food and drugs authorities, namely, county councils and county borough councils, and in certain cases borough councils (*g*), are required by sect. 15 of the Act to appoint analysts of food and drugs, and are entrusted with the administration of the Act and regulations. Frequently the M.O.H. is required by the local authority concerned to supervise the work, subject to their directions, but in other cases a special officer is appointed for the purpose. The procedure under the Act of 1928, recommended by the M. of H. to local authorities, is set out in a memorandum issued in 1929 (*h*). Information must be sent to the Ministry respecting unsatisfactory samples, showing what legal action has been taken and the result. Particulars should be given of any exceptional prosecutions, especially in connection with adulteration of milk or with the application of new legislation or regulations. When there has been no prosecution a brief statement of the reason and any other action taken must be sent to the Ministry. Particulars of offences other than adulteration, *e.g.* contraventions of the labelling requirements, obstructions or refusals to sell, and of the action taken, must also be sent to the Ministry. The Ministry further desire to be informed of all cases in which samples have been submitted to the public analyst, or any other action taken respecting the composition or description of food otherwise than under the P.H.As., the Bread Acts or the Meehandise Marks Acts. The M. of H. require copies to be sent to them of any annual or special reports to the authority by the public analyst in connection with the Act of 1928, or the results of special investigations as to particular foods, with a copy of any reports on like matters which may be made by the M.O.H. or other officer. Information given to the local authority by the public analyst, showing the composition of each sample of milk analysed, is also regarded as valuable by the Ministry, and they desire to receive a copy of any such report.

As already indicated, every food and drugs authority must appoint a public analyst. It is exceptional for the M.O.H. so to be appointed, as he is not usually qualified to discharge the duties, but under sect. 16 of the Act (*i*), an M.O.H., sanitary inspector, inspector of weights and measures, inspector of a market or a police constable may purchase or take samples of food or drugs and submit them for analysis to the public analyst, who must analyse the sample submitted and furnish a certificate of the result. In practice, however, the M.O.H. seldom takes samples (see title **SAMPLING OF FOOD AND DRUGS**), this duty devolving either on the staff of sanitary inspectors or inspectors specially appointed for the discharge of duties under the Act of 1928. When the certificate of the public analyst shows that an offence under the Act has been committed, the person who caused the analysis to be

(*f*) 8 Halsbury's Statutes 884.

(*g*) See title **FOOD AND DRUGS AUTHORITIES**.

(*h*) Memo. 36 (Foods), January, 1929. M. of H.

(*i*) 8 Halsbury's Statutes 894.

made may prosecute the offender (*k*). If the M.O.H. is required to give evidence in proceedings in court, his evidence is usually confined to the question as to the injury to health likely to be caused by consumption of the food or drug found to be adulterated. [25]

*Preservatives, etc., in Food.*—Any local authority authorised to appoint an analyst (*l*) and any officer authorised by them in writing must take the necessary steps to see that Part II. of the Public Health (Preservatives, etc., in Food) Regulations (*m*) is observed. These regulations are frequently administered by the M.O.H. subject to the directions of the local authority, and they apply to all food manufactured in, or imported into, this country. It is an offence to manufacture for sale, or to sell, any food which contains any added preservative, except to the extent allowed by Part I. of the First Schedule to the regulations, or any added colouring matter indicated in Part II. of the First Schedule (*n*). Any article of food specified in para. 1 of the Second Schedule to the regulations (*o*), if exposed or offered for sale by retail and which contains a preservative to the extent allowed by the regulations, must be properly labelled, or have a notice exhibited in a conspicuous position to the effect that the article contains preservative; but this provision does not apply to food for consumption by a customer in a hotel or restaurant or other such place. Samples may be taken in accordance with the provisions of the Food and Drugs (Adulteration) Act, 1928; see title SAMPLING OF FOOD AND DRUGS.

Part III. of the regulations already mentioned forbids any person to import into England or Wales for sale any article of food containing any added preservative or added colouring matter prohibited by the regulations, or any cream intended for sale which contains any thickening substance. This part of the regulations may be enforced and samples taken (see title SAMPLING OF FOOD AND DRUGS) by the Customs Officer and port health authorities. Borough and district councils also have power to enforce and execute Part III., where the foodstuff is landed from a ship or aircraft outside the jurisdiction of a port health authority or where the article is imported in a vehicle and the customs examination is deferred with the consent of the Commissioners of Customs and Excise until the vehicle reaches a place outside such jurisdiction. If the authority executing Part III. of the regulations are of opinion that an offence has been committed, they must inform the M. of H., giving the name of the importer and other information as to the destination of the consignment. [26]

*Food Poisoning.*—The Minister of Health has issued a memorandum (*p*) on the steps to be taken by medical officers of health in cases of suspected food poisoning. Cases of food poisoning are not compulsorily notifiable by medical practitioners outside London, and the M.O.H. relies for information on the co-operation of medical practitioners, complaints which may be received from affected persons or their relatives, and death certificates. The M.O.H. must notify

(*k*) Act of 1928, s. 27 (2); 8 Halsbury's Statutes 900. See also Vol. VI., pp. 124, 130.

(*l*) See title FOOD AND DRUGS AUTHORITIES.

(*m*) Public Health (Preservatives, etc., in Food) Regulations, 1925 (S.R. & O., 1925, No. 775), as amended by 1926, No. 1557; and 1927, No. 377).

(*n*) Regulations of 1925, art. 4 (1), as amended in 1927.

(*o*) S.R. & O., 1925, No. 775, art. 4 (2).

(*p*) Memorandum 39/Foods. January, 1921; and Memo. 188/Med., 1935.

the Minister at the earliest possible stage whenever he has reason to suspect any death or outbreak of illness due to food poisoning, and even where the medical officer is aware of a few cases of illness only the early notification of the matter, by telegram or telephone, to the Ministry is desirable. In this connection, the M.O.H. is required by art. 17 (7) of the Sanitary Officers (Outside London) Regulations, 1935 (g), forthwith to report to the Ministry any serious outbreak of disease and, in the case of a non-county borough or district, to notify the county M.O.H. In any outbreak where the suspected food has been prepared in his area, he should at once proceed to make detailed investigations into the conditions of its preparation and obtain material for bacteriological or chemical examination. The complete history of all the cases attacked should be forthwith obtained, and inquiries should commence without awaiting the result of chemical or bacteriological examinations. Steps should be taken to prevent further consumption of the suspected food by stopping its sale and by recovering unconsumed portions already sold. Where the suspected food has not been prepared in the borough or district, information should be obtained from the vendor as to the consignor, with the date and quantity of food.

Samples should be secured of any remaining portions of the actual food which the patient consumed as well as samples of food of similar origin, or food prepared from the same ingredients. Post-mortem materials from any fatal case or cases, pathological material from the sufferers and samples of blood should be obtained and sent for examination to the Ministry's Pathological Laboratory in London, marked "urgent" and addressed Medical Department (Med. I.), M. of H., Whitehall, S.W.1, and if possible the department should be notified in advance.

Outbreaks of antimony poisoning due to the use of enamelled vessels of inferior quality for the preparation of acid drinks such as lemonade have occurred, and the Ministry have also issued a memorandum (r) on this subject, giving particulars of such outbreaks. They suggest that as the use of antimony in place of tin has become common, it is advisable that the public should be informed that enamelled hollow-ware vessels obviously intended for other purposes may be dangerous if used for the preparation or storage of food or drink. [27]

**Food-Products for Export.**—The M. of H. have arranged a system of certification for food products derived from meat for export (s).

*Australia, Canada.*—When the food products are to be exported to Australia or Canada, the firm requiring goods to be certified must apply to the Ministry for the designation of an officer to act as certifying officer. The firm must give an undertaking that all necessary facilities will be given to the certifying officer in the matter of access, inspection and sampling, and that no information will be withheld. The M.O.H. of the borough or district may be designated a certifying officer by the M. of H. A certifying officer is required to keep himself informed by personal enquiry and other available ways: as to (1) the sanitary condition, etc., of the premises in which the food is prepared, stored or packed, with special regard to the possibility of contamination, (2) the cleanliness and wholesomeness of the methods employed in preparing,

(g) S.R. & O., 1935, No. 1110.

(r) See Memorandum 171 (Med.), dated February, 1933.

(s) See Memorandum 32 (Foods), dated December, 1920.

storing and packing the food products, and (3) the precautions taken to avoid the use of diseased, unsound or unwholesome material as well as the arrangements for safe disposal of diseased, unsound, unwholesome or otherwise unfit food. In the case of meat products, the certifying officer must satisfy himself that the animals from which the products are prepared have been subjected to an ante-mortem and a post-mortem veterinary inspection and found free from disease and fit for human food. Where products are made from animals slaughtered in the United Kingdom, the certifying officer, before certifying as to veterinary examination, must be satisfied that the animals were subjected to veterinary examination, ante-mortem and post-mortem, by an officer of the local authority; or that the animals were slaughtered in a public abattoir under veterinary inspection; or the applicant must furnish a declaration signed by an approved qualified veterinary surgeon appointed by the firm, to the effect that an ante-mortem and a post-mortem examination showed that the animals were free from disease. Where the products are prepared from imported material, the certifying officer must satisfy himself that the material was accompanied by a certificate as to ante-mortem and post-mortem inspection signed by an official of the national government of the country of origin, being a country, so far as Canada is concerned, whose certificates the Canadian authorities accept. In addition to their own certificates, the Canadian authorities accept those from Australia, New Zealand, Argentina, and the United States of America. Where the products are prepared partly from meat of animals slaughtered in Great Britain and partly from meat imported into England and Wales, the Australian authorities require a certificate in a prescribed form certifying both kinds of meat after examination as above-mentioned to be free from disease and suitable in every way for human consumption.

If the certifying officer is not satisfied on the points already mentioned, or as to the veterinary examination, certification must be withheld, and the certifying officer must notify the M. of H. in any instance where he has refused to grant a certificate. Forms of certificate for the use of certifying officers are obtainable from H.M. Stationery Office, Kingsway, W.C.2. [28]

*United States of America.*—In view of the requirements contained in the regulations of the United States Department of Agriculture, arrangements have been made by the M. of H. for the official certification of meat and meat products prepared or packed by traders in England or Wales for export to the United States. Under these arrangements, the Ministry usually designate the M.O.H. as an officer of the national government for the purpose of giving the required certificate. His duties as a certifying officer are similar to those of a certifying officer already stated as to exports to Australia or Canada, and include certification as to the freedom of the meat from preservatives and colouring matter not permitted by the United States regulations (t). [29]

**Health Propaganda.**—Any borough or district council or county council may spend money in the publication within their area of information relating to health or disease, for the delivery of lectures and the display of pictures or cinematograph films in which such questions are dealt with (u). This power is to be exercised subject to

(t) See Memorandum 135 (Foods), dated June, 1932.

(u) P.H.A., 1936, s. 179; 29 Halsbury's Statutes 446, which will replace P.H.A., 1925, s. 67; 13 Halsbury's Statutes 1145.

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any conditions or restrictions imposed by regulations of the M. of H., but no such regulations have hitherto been made. The M.O.H. is usually required to advise the council on the methods to be adopted and the information to be supplied. In order that advice and material may be at the disposal of local authorities and their medical officers, the Central Council for Health Education has been established by the Society of Medical Officers of Health. On this body there are representatives of the medical officers, the associations of local authorities and various societies and persons interested in health propaganda. This central council will arrange for the supply of lecturers, films, literature, health exhibitions and other means of health propaganda at the request of the M.O.H. or local authority. [30]

**Horseflesh sold for Food.**—See title HORSEFLESH, SALE OF.

**Hospitals.**—When the P.H.A., 1936, comes into force, the provision by a county council or borough or district council of hospital accommodation for persons in their area who are sick will be authorised by sect. 181 (1) of that Act (a). By sect. 343, "hospital" includes any premises for the reception of the sick, and by sect. 181 (2) this power is declared to include the provision of clinics, dispensaries and out-patient departments, a power which was always assumed to exist, though not previously conferred in express terms. Where the council are a county or county borough council, or are a welfare authority under sect. 200 of the Act, sect. 181 (2) also allows them to provide maternity homes, viz., premises used or intended to be used for the reception of pregnant women or of women immediately after childbirth (b). By sect. 181 (3) of the recent Act, a county council or borough or district council may make reasonable donations or subscriptions to a voluntary hospital or institution, subject to the limit of expenditure imposed by the sub-section (c).

Sects. 1, 113 of L.G.A., 1929 (d), transferred to county councils and county borough councils all poor law functions and property, including all hospitals and institutions previously provided or maintained by boards of guardians, but sect. 5 of the Act envisaged that these establishments might be ultimately administered otherwise than as poor law institutions; see title HOSPITAL AUTHORITIES at p. 27 of Vol. VII. Hospitals thus dealt with come under the general scheme of public health administration for which the M.O.H. is responsible to the local authority. Even where for one reason or another these transferred hospitals remain as poor law institutions, the ultimate intention to remove them from poor law administration and bring them within the scope of the work of the M.O.H. is to be noted in art. 165 (2) of the Public Assistance Order, 1930 (e), which requires the M.O.H. of a county or county borough to advise the council on public health and other medical questions arising in connection with the discharge of their poor law functions. It thus becomes the M.O.H. of a county or county borough to take a wide view as to his responsibility in regard to these matters, and his general position is stated by the Chief Medical

(a) 29 Halsbury's Statutes 447. Replacing P.H.A., 1875, s. 131; 13 Halsbury's Statutes 678; and L.G.A., 1929, s. 14 (1); 10 Halsbury's Statutes 891.

(b) See definition in s. 199 (1). This part of s. 181 (2) will replace L.G.A., 1929, s. 14 (2); 10 Halsbury's Statutes 891.

(c) Replacing P.H.A., 1925, s. 64; 13 Halsbury's Statutes 1143.

(d) 10 Halsbury's Statutes 383, 953.

(e) S.R. & O., 1930, No. 185; 12 Halsbury's Statutes 1078.

Officer of the M. of H. in the appendix to Circular No. 1095 on the Public Assistance Order, 1930. It should be observed that the M.O.H. cannot interfere with the statutory duties of the medical officers of institutions and district medical officers, and that notwithstanding "declarations" or "appropriations" the duties of the poor law authority are not in any way impaired. [31]

From time to time a county, borough or district council may have to consider the provision of new or additional hospital accommodation. In such circumstances they will be required by sect. 182 of P.H.A., 1936 (f), to consult such committee or other body as may represent both the governing bodies and medical or surgical staff of voluntary hospitals in their area. The M.O.H. should always bear this provision in mind, as it has for its object the provision and use of hospital accommodation in every area to the best possible advantage of all concerned and without any unnecessary or wasteful competition between public and voluntary bodies (see title HOSPITALS).

The M.O.H. should also report to his council from time to time on the necessity for and the sufficiency of hospital accommodation for infectious disease for the county or district, having regard to the present and the potential population of the area. He should also advise as to the suitability or otherwise of the buildings, staffing and equipment, and the need from time to time for the improvement of a hospital in accordance with modern practice and knowledge. He should secure as far as possible that the medical treatment of the patients is in accordance with the best medical practice. Isolation hospitals will in future be provided under sect. 181 of P.H.A., 1936, and the Isolation Hospitals Acts, 1893 and 1901 (g), will be repealed by proviso (f) to sect. 846 (1) of the Act of 1936 on October 1, 1939. It is contemplated that the various isolation hospitals committees and boards will have then been dissolved, and their property and liabilities transferred to a county council, local authority or joint board, by orders of the M. of H. made under sect. 815 of the Act.

Every county council was required by sect. 63 of L.G.A., 1929 (h), to make a survey of the hospital accommodation for the treatment of infectious disease within the county, and after consultation with the councils concerned to submit to the Minister for his approval a scheme for the provision of adequate hospital accommodation for this purpose. [32]

**Houses Let in Lodgings.**—See title LODGING HOUSES (i).

**Housing.**—The powers and duties of local authorities in relation to housing are contained in the Housing Act, 1936, which imposes important duties on the M.O.H. [33]

**Inspection of District.**—Sect. 5 of the Housing Act, 1936 (j), makes it the duty of a borough or district council to cause a periodical inspection to be made of their area in order to ascertain whether any house therein is unfit for human habitation. For this purpose, it is their duty and the duty of every officer to comply with such regulations and to keep such records as the Minister may prescribe. It is required that this inspection

(f) 29 Halsbury's Statutes 448. Replacing L.G.A., 1929, s. 18; 10 Halsbury's Statutes 891.

(g) 13 Halsbury's Statutes 862, 888.

(h) 10 Halsbury's Statutes 925. To be replaced by P.H.A., 1936, s. 185.

(i) Housing Act, 1925, ss. 6, 7; 13 Halsbury's Statutes 1006, now replaced by Housing Act, 1936, ss. 6, 7 and 8; 29 Halsbury's Statutes 568, and Housing Act, 1935, s. 68; 28 Halsbury's Statutes 245, now replaced by Housing Act, 1936, ss. 6, 8 and 189 (4); 29 Halsbury's Statutes 568 and 684.

(j) Replacing Housing Act, 1925, s. 8; 13 Halsbury's Statutes 1008.

be carried out by the M.O.H. or by an officer designated by the council, but acting under the direction and supervision of the M.O.H. The sanitary inspector is usually designated to carry out the actual inspection. The M.O.H. is responsible for the preparation of lists of dwelling-houses requiring early inspection. The council must take into consideration at each of their ordinary meetings the records of inspection and give directions as to the action to be taken under their powers (*h*). [34]

*Abatement of Overcrowding.*—Under sect. 57 of the Housing Act, 1936, it is the duty of the borough or district council to cause an inspection to be made of their area to ascertain what dwelling-houses therein are overcrowded according to the standard laid down and to report the results to the M. of H. At the same time they are required to submit a report on the number of new houses required to abate the overcrowding, together with proposals for the provision of such new houses.

Regulations made by the Minister prescribing the duties of medical officers of health of boroughs and districts are by sect. 67 of the Act to include the duty to furnish annually to the Minister particulars as to overcrowding and of the steps taken to abate overcrowding. [35]

*Official Representation.*—Under sect. 154 of the Housing Act, 1936 (*l*), the M.O.H. of a borough or district is required to make an official representation to the authority whenever he is of opinion that any house in his area is unfit for human habitation or that any area should be dealt with as a clearance area. Similarly, if he receives a complaint in writing from a justice of the peace, or from four or more local government electors, or from a parish council in the case of a rural district, that any house is unfit or that an area should be dealt with as a clearance area, he must make an inspection and report to the local authority (*ibid.*).

A county M.O.H. may make an official representation to the county council for transmission to the council of the borough or district concerned, unless that borough or district has a population of more than 10,000 (*m*).

By sect. 154 (*h*) of the Housing Act, 1936 (*n*), a borough or district council are required, as soon as may be, to take into consideration any official representation which has been made to them. [36]

*Houses which are Unfit.*—Upon consideration of an official representation that a house is unfit for human habitation the borough or district council must under sect. 9 (1) of the Housing Act, 1936 (*o*), satisfy themselves as to its condition and must serve a notice requiring the house to be made fit for human habitation, unless they are satisfied that it is not capable of being rendered fit at a reasonable expense, in which event an order for the demolition of the premises may be made under sect. 11 of the Act (*p*). In the case of a part of a building deemed to be unfit for human habitation the council may make a closing order under sect. 12 of the Act instead of a demolition order (*q*).

(*h*) Housing Consolidated Regulations, 1925 (S.R. & O., 1925, No. 806), art. 80.

(*l*) Replacing Housing Acts, 1930, s. 51 (2), (3); 23 Halsbury's Statutes 431.

(*m*) See definition of "official representation" in s. 188 of the Act of 1936, replacing s. 51 (1) of Housing Act, 1930; 23 Halsbury's Statutes 431.

(*n*) Replacing Housing Act, 1930, s. 51 (3); 23 Halsbury's Statutes 431.

(*o*) Replacing *ibid.*, s. 17; *ibid.*, 409.

(*p*) Replacing *ibid.*, s. 19; *ibid.*, 412.

(*q*) Replacing Housing Act, 1935, s. 84 (1); 28 Halsbury's Statutes 252.

In the event of legal proceedings the M.O.H. may be required to give evidence in support of his official representation. [37]

**Clearance Areas.**—A borough or district council, upon consideration of an official representation, may under sect. 25 of the Housing Act, 1936 (*r*), decide to declare any area to be a clearance area (*r*), and may make a clearance order or an order for the compulsory purchase of the land comprised in the clearance area and securing the demolition of the buildings. A clearance order must be confirmed by the M. of H., and before confirmation the Minister must hold a public inquiry, under para. 5 of the Third Schedule to the Act, if any objection to the order is outstanding. If a public inquiry is held, the M.O.H. must be prepared to give evidence in support of his official representation. [38]

**Underground Rooms.**—A borough or district council may make regulations under sect. 12 (2) of the Housing Act, 1936 (*s*), as to the ventilation, lighting, etc., of underground rooms, and the enforcement of these regulations usually falls to the M.O.H., acting under the directions of the local authority. An underground room may be closed under sect. 12 of the Act, and by sect. 6 (1) (k) bye-laws may be made for the prevention of nuisances from such rooms. [39]

**Infant Life Protection**, see Child Life Protection, *ante*, p. 9.

**Infectious Disease.**—The purpose of the various enactments and regulations of the M. of H. relative to infectious disease is to secure control of infectious diseases and to prevent their spread. The methods generally adopted are notification, isolation, quarantine and disinfection. There are also special measures for certain diseases, as, for example, vaccination and the surveillance of contacts in smallpox (*t*) and active immunisation in diphtheria (*u*). The execution of these powers and duties is entrusted to the M.O.H. of a borough or district by his council, and certain specific powers and duties are also given to him by statute or regulations. The M.O.H. is frequently called in as a consultant by the private medical attendant in respect of doubtful cases of infectious disease and particularly in the diagnosis of smallpox. [40]

**Notification.**—Persons in a building, not being an isolation hospital, who are suffering from an infectious disease notifiable under a public general or local Act (*a*) or under regulations made by the M. of H. (*b*) must be notified to the M.O.H. of the borough or district in which the building is situate. Such notifications should be treated as vouchers for payment of the prescribed fees to medical practitioners for notifying the cases, and should be retained by the M.O.H. for this purpose, who should also keep a register of all cases notified. On receipt of a notification, it is the duty of the M.O.H. to make such enquiries and take such steps as are necessary or desirable for investigating the source of

(*r*) Replacing Housing Act, 1930, s. 1; 23 Halsbury's Statutes 396.

(*s*) Replacing Housing Act, 1925, s. 18; 13 Halsbury's Statutes 1013; and Housing Act, 1935, s. 84 (2); 28 Halsbury's Statutes 252.

(*t*) Memorandum No. 71A/Med. of M. of H., dated November, 1922.

(*u*) Memorandum No. 68/Med. of M. of H., dated July, 1922.

(*a*) P.H.A., 1930, s. 144, which will replace the Infectious Disease (Notification) Acts, 1889 and 1899; 13 Halsbury's Statutes 811, 879. Some diseases are also notifiable under a local Act, see p. 210 of Vol. VII.

(*b*) P.H.A., 1930, s. 143, which will replace P.H.A., 1875, s. 130; 13 Halsbury's Statutes 678.

infection, for preventing the spread of infection and for removing conditions favourable to infection.

Many of the provisions in Part V. of the P.H.A., 1936, refer to persons suffering from a "notifiable disease." This expression is defined in sect. 843 of the Act as meaning any disease specified in the definition (*e.g.* smallpox), and as including any infectious disease which has been made notifiable by the local authority, as respects their area, by an order under sect. 147 of the Act. But the definition does not cover an infectious disease which is made notifiable by regulations of the M. of H. under sect. 143 of the Act. [41]

*Isolation.*—Persons suffering from an infectious disease may be allowed to remain at home, if isolation is satisfactory, but may be removed to and detained in any suitable hospital or place, usually the isolation hospital for the borough or district, if they are without proper lodging or accommodation or have been brought within the area by a ship or boat (*c*). [42]

*Conveyance.*—Ambulances, which may be used for the removal of persons suffering from an infectious disease may be provided under sect. 107 of P.H.A., 1936 (*d*), by a county council or a borough or district council. The owner, driver or conductor of a public conveyance, used for the conveyance of passengers at separate fares (*e.g.* an omnibus), is forbidden by sect. 160 (1) of the Act (*e*) to use it to convey therein any person whom he knows to be suffering from a notifiable disease. The person in charge of any kind of public conveyance must give notice to the M.O.H. under sect. 160 (3) (*f*) as soon as he becomes aware that he has conveyed a person suffering from a notifiable disease. See also sect. 159 of the Act. [43]

*Cleansing, Disinfection, etc.*—Where the M.O.H. of a borough or district certifies that the cleansing and disinfection of any premises, and of any articles therein likely to retain infection, would tend to prevent the spread of infectious disease, the council must, under sect. 167 (1) of P.H.A., 1936 (*g*), give notice to the occupier of the premises, proposing to do the work at his cost, unless he informs the council that he will do the work. The cleansing and disinfection must be carried out to the satisfaction of the M.O.H. if the work is done by the occupier. Where the M.O.H. certifies under sect. 84 of P.H.A., 1936 (*h*), that any article in any premises is in so filthy a condition as to render necessary its cleansing, purification or destruction to prevent injury, or danger of injury to the health of any person in the premises, the borough or district council must cause the article to be cleansed, purified, disinfected or destroyed at the expense of the council. Sect. 84 also extends to any article which is verminous or likely to be verminous and allows

(*c*) P.H.A., 1936, ss. 169, 172, 267, which will replace P.H.A., 1875, s. 124; P.H.A. Amendment Act, 1907, s. 65; and P.H.A., 1925, s. 62; 13 Halsbury's Statutes 675, 935 and 1142.

(*d*) Replacing P.H.A., 1875, s. 123; 13 Halsbury's Statutes 675, and extending the power to county councils.

(*e*) Replacing P.H.A. Amendment Act, 1907, s. 63; 13 Halsbury's Statutes 934.

(*f*) Replacing *ibid.*, s. 64; *ibid.*

(*g*) Replacing P.H.A., 1875, s. 120; Infectious Disease (Prevention) Act, 1890, ss. 5, 6; and P.H.A. Amendment Act, 1907, s. 66; 13 Halsbury's Statutes 674, 810, 935.

(*h*) Replacing P.H.A. Amendment Act, 1907, s. 56; and P.H.A., 1925, s. 45; 13 Halsbury's Statutes 932, 1134.

similar action to be taken (*i*). Under sect. 166 of the Act (*k*) a borough or district council may provide a disinfecting station and may cause any article brought to it to be disinfected free of charge, and under sect. 86 of the Act (*l*) any such council or a county council may provide such cleansing stations as are necessary for the discharge of their functions under the Act.

Any person who gives, lends, sells, transmits or exposes, without previous disinfection, any clothing, bedding or rags which he knows to have been exposed to infection from a notifiable disease is liable under sect. 148 of P.H.A., 1936 (*m*), to a penalty. Articles known to have been exposed to infection from a notifiable disease are forbidden by sect. 152 (*n*) to be sent to a laundry or public washhouse for the purpose of being washed, or to any place for the purpose of being cleaned, without previous disinfection by the council or to the satisfaction of the M.O.H. or some other doctor. Matter exposed to infection from a notifiable disease must not be thrown into a dustbin or ashpit (*o*). Library books must not be taken out for use, or used, by a person suffering from a notifiable disease, and if used must be disinfected or destroyed by the borough or district council, or by the county council if the library has been provided by them (*p*). [44]

*Infected Premises.*—Houses in which persons suffering from a notifiable disease have been residing must not be let without previous disinfection to the satisfaction of the M.O.H. or another doctor, and persons ceasing to occupy such a house must have it similarly disinfected and also notify the owner (*q*). A court of summary jurisdiction on the application of a borough or district council may close a common lodging-house on account of the existence or recent occurrence therein of a notifiable disease (*r*). [45]

*Control of Sufferers.*—Any person who knows that he is suffering from a notifiable disease must not under penalty expose by his presence or conduct other persons to the risk of infection in a street, public place, place of entertainment or assembly, or a club, hotel, inn or shop, and a person having the care of any person whom he knows to be so suffering must not expose other persons to the risk of infection in any such place (*s*). A person who knows that he is suffering from a notifiable disease must not engage in any trade, business or occupation if there is any risk of spreading the disease (*t*). No child suffering from a notifiable disease, or who has been exposed to infection of a notifiable disease, may attend school after notice of prohibition from the M.O.H. (*u*).

(i) Replacing P.H.A., 1925, s. 45; 13 Halsbury's Statutes 1134.

(k) Replacing P.H.A., 1875, s. 122; *ibid.*, 675.

(l) Replacing P.H.A., 1925, s. 40; *ibid.*, 1136; and the Cleansing of Persons Act, 1897; *ibid.*, 874.

(m) Replacing P.H.A., 1875, s. 126, in part; *ibid.*, 676. See also s. 154 of P.H.A., 1936.

(n) Replacing P.H.A. Amendment Act, 1907, s. 55; *ibid.*, 931. The provision as to cleaners is new.

(o) P.H.A., 1936, s. 156; 29 Halsbury's Statutes 435; replacing Infectious Disease (Prevention) Act, 1890, s. 13; 13 Halsbury's Statutes 822.

(p) P.H.A., 1936, s. 155; replacing P.H.A. Amendment Act, 1907, s. 59; 13 Halsbury's Statutes 933.

(q) P.H.A., 1936, ss. 157, 158; replacing P.H.A., 1875, ss. 128, 129; and Infectious Disease (Prevention) Act, 1890, s. 7; 13 Halsbury's Statutes 677, 820.

(r) P.H.A., 1936, s. 245; 29 Halsbury's Statutes 480; replacing P.H.A., 1925, s. 59; 13 Halsbury's Statutes 1140.

(s) *Ibid.*, s. 148; replacing P.H.A., 1875, s. 126; *ibid.*, 676.

(t) *Ibid.*, s. 149; replacing P.H.A. Amendment Act, 1907, s. 52; *ibid.*, 930.

(u) *Ibid.*, s. 150; replacing *ibid.*, s. 57; *ibid.*, 932.

A common lodging-house keeper must notify the M.O.H. of any case therein of infectious disease (a). The M.O.H. on obtaining a warrant of a justice of the peace may examine any inmate of a common lodging-house where there is reason to believe that a person is suffering or has recently suffered from a notifiable disease (b). [46]

*Contacts.*—The principal of a school in which any scholar is suffering from a notifiable disease must, if required by the M.O.H. of a borough or district, furnish him with a list of the scholars other than boarders (c). If any two members of a sanitary authority acting on the advice of the M.O.H. of the borough or district in which the school is situate require either the closure of the school or the exclusion of certain children for a specified time, with a view to preventing the spread of disease or any danger to health likely to arise from the condition of the school, the requirement must be complied with (d). The M. of H. and Board of Education have issued a memorandum (e) on closure of and exclusion from school dealing with the powers of sanitary authorities and education authorities for the prevention of the spread of infectious disease. Part V. of the memorandum sets out rules for action in respect of particular infectious diseases. On the certificate of the M.O.H., when any infectious disease occurs in a house, or the borough or district council deem it necessary to disinfect a house, persons may be removed from the infected premises voluntarily or compulsorily by order of a justice to temporary shelter or accommodation provided by the council (f). [47]

*Infected Dead Bodies.*—If the M.O.H. of a borough or district, or another doctor, certifies that in order to prevent the risk of spreading infection the body of a person who has died in a hospital from a notifiable disease shall not be removed therefrom unless direct to a mortuary or for immediate burial or cremation, it shall not be lawful to remove the body from the hospital except for such purpose (g). On a certificate of the M.O.H. of the borough or district, or of another doctor on the staff of the council, a justice may order a body remaining unburied in unsuitable premises to be removed from such premises to a mortuary and buried within a time to be specified in the order, or its immediate burial if the justice considers this necessary (h). Steps must be taken to prevent unnecessary contact or proximity with the body of a person who has died from a notifiable disease (i). It is unlawful to hold a wake over the body of a person who has died while suffering from a notifiable disease (j). [48]

*Infected Milk.*—For the measures which can be adopted in cases in which infectious disease is attributable to milk, see Vol. VII., pp. 237—240, under the head "Milk and Infectious Disease."

*Nursing.*—A borough or district council may provide nurses for attendance on patients suffering from any infectious disease in their

(a) P.H.A., 1936, s. 242; 20 Halsbury's Statutes 480; replacing P.H.A., 1875, s. 84; 13 Halsbury's Statutes 650.

(b) *Ibid.*, s. 243; replacing P.H.A., 1925, s. 58; *ibid.*, 1140.

(c) *Ibid.*, s. 151; replacing P.H.A. Amendment Act, 1907, s. 58; *ibid.*, 932.

(d) Education Code for Public Elementary Schools, 1926, art. 22.

(e) Memorandum of M. of H. and Board of Education on closure of and exclusion from school.

(f) P.H.A., 1936, s. 168; replacing Infectious Disease (Prevention) Act, 1890, s. 15; P.H.A. Amendment Act, 1907, s. 61; 13 Halsbury's Statutes 822, 933.

(g) *Ibid.*, s. 163; replacing Infectious Disease (Prevention) Act, 1890, s. 9; *ibid.*, 820.

(h) *Ibid.*, s. 162; replacing *ibid.*, s. 10; *ibid.*, 821.

(i) *Ibid.*, s. 164; replacing P.H.A., 1925, s. 57; *ibid.*, 1140.

(j) *Ibid.*, s. 165; replacing P.H.A. Amendment Act, 1907, s. 68; *ibid.*, 936.

area in cases where suitable hospital accommodation is not available, or where removal to hospital is likely to endanger the patient's health (k). Charges for the services of the nurses may be made. [49]

*Anthrax.*—By the Anthrax Order, 1928 (l), of the Minister of Agriculture, the diseases of animals inspector of the local authority is required forthwith to notify the M.O.H. of the sanitary district when he receives information of a diseased or suspected animal or carcass in his district, and it is the duty of the medical officer to advise on disinfection. The importation from Japan of shaving brushes was prohibited by the Anthrax Prevention (Shaving Brushes) Order, 1920 (m). With regard to shaving brushes made in England and Wales the M. of H. considers that it would be of great advantage if local authorities possessing efficient steam disinfecting apparatus would afford brush manufacturers in their area facilities for the disinfection of the hair before the brush is manufactured, upon terms to be agreed (n). [50]

*Botulism.*—This is a rare disease, but arrangements have been made by the M. of H. so that where an outbreak of this disease occurs, the M.O.H. can obtain a supply of antitoxin from the M. of H. in London or from the medical officers of health at certain centres in England (o). [51]

*Cerebro-Spinal Fever.*—This disease was made notifiable by regulation as from September 1, 1912 (p). A memorandum on cerebro-spinal fever issued by the Local Government Board (M. of H.) in February, 1915, and revised in August, 1918, sets out the generally accepted facts about the disease. The administrative action which should follow on the occurrence of cases or suspected cases of the disease include bacteriological aids to diagnosis, the isolation of the patient, disinfection, the investigation of sources of infection, including the investigation of cases classified as influenza which may be anomalous types of the disease, and the possibility of the occurrence of healthy carriers as agents of infection. Precautionary measures should also be taken in respect of the contacts with the sufferer. [52]

*Cholera, Yellow Fever, Plague.*—An M.O.H. must forthwith report to the M. of H. any case of cholera or plague notified to him (q). Special duties in relation to cholera, yellow fever and plague are imposed on every port M.O.H. (see *post*, p. 44). [53]

*Diphtheria.*—In addition to the usual action to be taken by the M.O.H. on the occurrence of infectious disease in general, diphtheritic anti-toxin may be given free (r) to medical practitioners and arrangements made for the immunisation of persons against the contraction of diphtheria (s). [54]

*Encephalitis Lethargica.*—A memorandum published by the M. of H.

(k) P.I.A., 1936, s. 177; 29 Halsbury's Statutes 446; replacing P.I.A. Amendment Act, 1907, s. 67; 18 Halsbury's Statutes 936.

(l) S.R. & O., 1928, No. 656.

(m) S.R. & O., 1920, No. 253.

(n) Circular No. 252 of M. of H., October 17, 1921.

(o) M. of H. Circular, No. 342 and memorandum of September 19, 1922.

(p) S.R. & O., 1912, No. 1226.

(q) Sanitary Officers (Outside London) Regulations, 1935, art. 17 (7); S.R. & O., 1935, No. 1110.

(r) Diphtheria Antitoxin (Outside London) Order, 1910; S.R. & O., 1910, No. 867.

(s) Memorandum M. of H., dated July, 1922, No. 68 (Med.).



in 1921 and revised in 1924 and 1929 (*t*) gives information about this disease which was made compulsorily notifiable throughout England and Wales as from January 1, 1919 (*u*). On receipt of notifications or on learning of suspected cases, the M.O.H. should proceed to determine the associated conditions and any facts which may throw light on the epidemiology of the disease; should give assistance in any practicable pathological investigation and in obtaining material for the purpose; should aid in securing the treatment of the case in hospital or otherwise; and advise as to the precautions required in the case of a disease apparently capable of transmission from person to person, especially through mild or abortive cases capable of carrying infection. The results of the inquiry into the associated conditions and facts, made as far as possible in consultation with the medical practitioner who has reported the case, should be included in the inquiry form sent out by and returnable to the M. of H. [55]

*Enteric Fever and Dysentery.*—Under Part III. of the First Schedule to the Public Health (Infectious Diseases) Regulations, 1927 (*a*), if the M.O.H. becomes aware of a case of either of these diseases, he may if he considers such a course necessary to prevent the spread of infection, report to the local authority in favour of the issue by them of notices requiring persons specified in the notices to discontinue any occupation connected with the preparation or handling of food or drink for human consumption until the risk of infection is removed, and to take such suitable measures as may be specified in the notice with regard to cleansing, disinfection, disposal of excreta and other matters. If the M.O.H. suspects that any person employed in any trade or business concerned with the preparation or handling of food or drink for human consumption is a carrier of enteric fever or dysentery infection, the local authority may give notice in writing to the employer that they consider it necessary for the M.O.H., or a medical officer acting on his behalf, to make a medical examination of such suspected person, and the employer and all other persons concerned must give all reasonable assistance in the matter. If the M.O.H. is of opinion after such examination or from any other evidence that the suspected person is a carrier of infection, the local authority may give notice in writing to the employer and to the suspected person with a view to preventing, during a period to be specified in the notice, the employment of such person in any trade or business concerned with the preparation of food or drink for human consumption. Medical assistance may be provided by the local authority under art. 15 of these regulations for any person in their area who is suffering from enteric fever or dysentery and is in need of such assistance. [56]

*Influenza.*—Influenza is not a notifiable disease but occurs from time to time in severe epidemic form. In 1918 and 1919 the disease was world wide and the population of England and Wales suffered severely. As death in influenza mainly results from lung or cardiac complications, it was decided to make acute primary pneumonia and acute influenzal pneumonia notifiable infectious diseases and this was done by the Public Health (Pneumonia, Malaria, Dysentery, etc.) Regulations, 1919 (*b*). The M. of H. issued a memorandum on influenza in 1919

(*t*) Memoranda M. of H. 45 (Med.), of 1921, 1924 and 1929.

(*u*) S.R. & O., 1918, No. 1741; and 1919, No. 2048.

(*a*) S.R. & O., 1927, No. 1004.

(*b*) Rescinded and re-enacted in the Public Health (Infectious Diseases) Regulations, 1927; S.R. & O., 1927, No. 1004.

which was revised in 1927 and again in 1929 (c). This memorandum is a complete statement of the known position with regard to influenza as an epidemic disease, and indicates the measures that should be taken by individuals who are attacked or exposed to attack, as well as the measures which should be taken by sanitary authorities. The action to be taken by these authorities depends largely on the education and co-operation of the public. Leaflets are issued by medical officers of health on how to avoid attack, how to protect oneself if attacked, how to protect other persons and the care that the sufferer should take of himself during his period of convalescence. Information should also be given as to the provision of institutional treatment for complicated cases, while the question of the organisation of domiciliary medical and nursing services during a severe epidemic should receive consideration. [57]

*Malaria.*—By Part I. of the First Schedule to the Public Health (Infectious Diseases) Regulations, 1927 (d), when a case of this disease comes to the knowledge of the M.O.H., he is required, if action is necessary to prevent the spread of infection, to take all practicable steps to see that the person suffering from malaria is supplied with efficient mosquito netting, receives necessary quinine treatment and proper advice as to the continuance of such treatment and that precautions are taken to prevent the spread of infection. If, in the opinion of the medical officer, two or more cases have been contracted within the area of the local authority, the council may appoint medical practitioners to make systematic visits to houses and offer to examine persons, to endeavour to obtain material for microscopic examination and to take measures to prevent the spread of the disease by administration of quinine and other steps. It is the duty of the M.O.H. to send immediately to the M. of H. and, unless the district is a county borough, to the county medical officer, the name and address of the patient, if he has reason to believe the disease was contracted in England and Wales. Medical assistance may be provided by the local authority for any person in their district suffering from malaria who is in need of such assistance (art. 15). [58]

*Ophthalmia Neonatorum.*—The M.O.H. of an area which is not a county borough is required to send a copy of every notification received by him to the county medical officer within twenty-four hours (e). Provision should be made for domiciliary and institutional treatment, and nothing should be done to deter midwives from promptly seeking medical aid in cases of inflammation of or discharge from the eyes. Maternity and child welfare authorities may provide home nursing in accordance with para. 19 of the circular (Maternity and Child Welfare 4) of the Local Government Board of August 9, 1918 (f). [59]

*Pneumonia.*—Acute primary pneumonia and acute influenzal pneumonia are notifiable diseases under the Public Health (Infectious Diseases) Regulations, 1927 (g), and under art. 10 it is the duty of the M.O.H. to make inquiries and take such steps as are desirable or necessary for investigating the source and preventing the spread of infection, and if no doctor is in attendance it is the duty of the medical

(c) Memorandum on Influenza of M. of H.; No. 2/Med., dated January, 1927. Re-issued and revised in 1929.

(d) S.R. & O., 1927, No. 1004.

(e) S.R. & O., 1926, No. 971.

(f) Printed on pp. 3548—3557 of Lumley's Public Health, 10th ed.

(g) S.R. & O., 1927, No. 1004.

officer to take such steps as are desirable for ascertaining the nature of the case. Medical assistance may be provided by the local authority for any person in their area who is suffering from either of these diseases and who needs such assistance. The M. of H. have issued a memorandum on this disease. The memorandum deals with the classification, bacteriology, predisposing causes, prophylaxis, and the general administrative measures which should be taken by the sanitary authority (*h*). [60]

*Polio-myelitis*.—Acute poliomyelitis including polio-encephalitis and polio encephalo-myelitis. This disease is fully dealt with in a memorandum of the M. of H. dated November, 1932 (*i*). Acute poliomyelitis was made notifiable as from September 1, 1912 (*k*), and the two other diseases were made notifiable in 1918 (*l*). When an M.O.H. receives a notification of a case or learns of a suspected case of poliomyelitis he should proceed to (1) aid in securing suitable accommodation, including isolation, for the patient in hospital or otherwise; (2) advise as to the precautions required, in the light of the information that the disease is apparently capable of transmission by mild cases or by even the apparently healthy; and (3) make an investigation of the associated circumstances, including a search for missed cases. In epidemic periods local authorities should endeavour to inform the public, by means of leaflets, posters, notices in the press, cinema films—preferably shown in the open—lectures in the schools, etc., as to how infection may be guarded against and of the care to be observed in case of attack. Public information should also be circulated respecting available arrangements and facilities for the treatment of patients. All crowded assemblies should be discouraged while an epidemic prevails, and all gatherings of young children should be avoided; nor should young children be allowed to enter any house where there is a case of illness. The M.O.H. should advise the local authority to consider measures to promote early diagnosis during the acute stage of poliomyelitis, and what arrangements should be made to send all children affected, whether the condition is slight or serious, to an institution equipped to give such special treatment as may be required to prevent avoidable muscular weakness or permanent deformity. In view of the high proportion of cases of poliomyelitis which occur below the age of five years, and in view of the good results of effective treatment and the serious consequences of neglect, it is important to take such steps as may be possible to secure orthopaedic treatment for young children in connection with maternity and child welfare schemes. Health visiting and the orthopaedic clinic are valuable means by which cases of paralysis are discovered and referred for treatment. All notified cases should be followed up throughout the whole period of the illness to ensure that their treatment is suitable and continuous. [61]

*Puerperal Fever and Puerperal Pyrexia*.—Medical practitioners must notify the M.O.H. of the borough or district, and unless the borough is a county borough the M.O.H. must send a copy of the notification to the county medical officer within twenty-four hours (*m*). Maternity and child welfare authorities will be able, with the sanction

(*h*) Memorandum No. 180/Med. of M. of H., September, 1935.

(*i*) Memorandum No. 166/Med. of M. of H., revised December, 1936.

(*k*) S.R. & O., 1912, No. 1226.

(*l*) See S.R. & O., 1918, No. 1741, and 1919, No. 2048.

(*m*) S.R. & O., 1926, No. 972, art. 5.

of the M. of H., under sect. 204 of P.H.A., 1936(n), to make arrangements for the special treatment of women suffering from puerperal pyrexia, for consultation with an obstetric specialist, for skilled nursing or for institutional treatment. It is important that the welfare authority and the M.O.H. should carry out in full the provisions of any scheme, and assist medical practitioners, in cases of puerperal pyrexia, with a view to reducing maternal mortality. [62]

**Smallpox.**—The duties of the M.O.H. are set out in detail in a memorandum issued by the M. of H. in 1922 (o). The M.O.H. should arrange for the removal to hospital of all cases of smallpox. In addition to thorough and complete disinfection of all rooms and their contents, it may be desirable to destroy some or all of the infected articles and pay compensation. The M.O.H. should visit the patient, in consultation with the medical practitioner, with a view to verifying the diagnosis. He must report the case immediately to the M. of H., and should also notify medical officers of health of neighbouring areas, so that they may have early notice of the proximity of smallpox. He should arrange for vaccination of contacts through the public vaccinator. The M.O.H. also has power to vaccinate or re-vaccinate immediate and willing contacts (p), including public health staff, and should do so unless they have been already vaccinated by their medical attendant or public vaccinator. The M.O.H. must keep a record of his vaccinations, and medical practitioners should be invited to inform him of suspected cases. Lists of contacts should be prepared and followed up. Where contacts have moved to other districts their names and addresses should be circulated to the local authorities of such districts. Public notice should be given with regard to the penalties imposed for an exposure of smallpox patients, the use of public conveyances, letting of houses, etc.; exceptional steps may have to be taken with laundries or common lodging-houses; and temporary shelter may be provided and food may be supplied to persons residing therein while their premises are being disinfected (see *ante*, p. 24). Special efforts should be made by the M.O.H. to trace the source of infection, and he should consider the advisability of recommending the local authority to make chicken-pox a compulsorily notifiable disease. A record must be kept of the names, ages, addresses and conditions as to vaccination of all patients admitted to a smallpox hospital (q). The special steps to be taken by medical officers of casual wards for the detection of cases among casuals are set out in circular No. 859 of the M. of H., dated January, 1928. Special steps must be taken with regard to smallpox contacts proceeding abroad, and these are set out in circular No. 1021 by the M. of H., dated July, 1929. [63]

**Tuberculosis.**—The duties of the M.O.H. on receipt of a notification of a case of tuberculosis are set out in the Public Health (Tuberculosis) Regulations, 1930 (r). They are to keep a register of the particulars contained in the notification and to regard every notification as confidential; to revise the register quarterly and send a copy of such revised statement, if the borough is not a county borough, to the

(n) 29 Halsbury's Statutes 463. Replacing Maternity and Child Welfare Act, 1918, s. 1; 11 Halsbury's Statutes 742.

(o) Dated November, 1922; No. 71A/Med.

(p) Public Health (Smallpox Prevention) Regulations, art. 2; S.R. & O., 1917, No. 146.

(q) Vaccination Act, 1898, s. 8; 13 Halsbury's Statutes 877; and Circular No. 890 of M. of H., dated May 16, 1928.

(r) S.R. & O., 1930, No. 572; 23 Halsbury's Statutes 446.

county M.O.H.; to notify the M.O.H. of another borough or district when a patient removes there; to send a weekly return of notifications to the county M.O.H. if the borough is not a county borough (art. 10). On receipt of a notification of a case of tuberculosis the M.O.H. of the borough or district must make such inquiries and take such steps as may be necessary or desirable for investigating the source of infection, for preventing the spread of infection and for removing conditions favourable to infection (art. 11). Under the direction of the council, the M.O.H. may supply all such medical or other assistance as may reasonably be required for the detection of tuberculosis and the prevention of the spread of infection (s). He may also take steps for the compulsory removal of a patient to a hospital (t) or the prohibition of the employment of persons in the milk trade, when suffering from tuberculosis of the respiratory tract in an infectious state (u).

County and county borough councils are responsible for the treatment, at or in dispensaries, sanatoria and other institutions approved by the Minister, of persons in their area suffering from tuberculosis (x). The principles on which the schemes of local authorities for the treatment of tuberculosis should be conducted are set out in a circular from the M. of H., No. 771, dated March 31, 1927. It is the duty of county and county borough medical officers of health, acting under the directions of their councils, to exercise general supervision over the schemes operating in the area for the treatment of tuberculosis. The duties of these officers include the general supervision of the staff employed; of the tuberculosis dispensary; of the various institutions for the treatment of pulmonary tuberculosis, tuberculosis in children and special forms of tuberculosis; of the arrangements made with general hospitals or special clinics for special diagnosis and for the treatment of complications; and of the institutions for the training and after care of patients. [64]

*Typhus Fever and Relapsing Fever.*—Under Part II. of the First Schedule to the Public Health (Infectious Diseases) Regulations, 1927 (a), when a case of typhus fever or relapsing fever comes to the notice of the M.O.H. of a borough or district, he must immediately send the name and address of the patient to the M. of H. and, unless the borough is a county borough, to the county M.O.H. He must also report, if he considers it necessary, to the council, who may by notice require the complete destruction of lice on the person and clothing of every occupant of the building and the destruction of lice in the building, and the temporary segregation of other persons until their persons and clothing have been completely freed from lice. Medical assistance may be provided by the local authority for any person in their district suffering from typhus fever or relapsing fever who is in need of such assistance (art. 15 of regulations of 1927). [65]

*Maternity and Child Welfare (aa).*—The maternity and child welfare service is administered by the welfare authority, that is to say by the

(s) S.R. & O., 1930, No. 572, art. 12.

(t) P.H.A., 1936, s. 172; 29 Halsbury's Statutes 442; replacing P.H.A., 1925, s. 62; 13 Halsbury's Statutes 1142.

(u) Public Health (Prevention of Tuberculosis) Regulations, 1925, art. 5; S.R. & O., 1925, No. 757.

(x) P.H.A., 1936, s. 171; replacing P.H. (Tuberculosis) Act, 1921, ss. 1, 3; 13 Halsbury's Statutes 971, 972.

(a) S.R. & O., 1927, No. 1004.

(aa) See also The British Encyclopedia of Medical Practice, Vol. I., title "Antenatal Care," and Vol. III., title "Child Health and Welfare."

county borough council in all instances, and in an administrative county by the county council or non-county borough or district council for the area in which that council are the local authority for the purposes of the Notification of Births Acts, 1907 and 1915, on September 30, 1937 (b). The county council may thus be the welfare authority for the whole or a portion of their county, and a non-county borough or district council may or may not be a welfare authority.

Acting under the direction of the welfare authority, the M.O.H. is responsible for the general administration of the service. The service includes ante-natal clinics; arrangements for the confinement of women either at home or in hospital; post-natal clinics for mothers; infant welfare clinics for children under five years of age and not attending a public elementary school; hospital accommodation for the complications of pregnancy, for confinements and for post-natal complications arising within a limited period after confinement; the provision of home helps during a confinement at home or in cases where the mother has to be removed to hospital. The service in question may also cover the provision of the services of an anaesthetist or a consultant in difficult cases of labour or complications arising during pregnancy or after confinement; the establishment of mothercraft classes; the provision of accouchement sets and surgical bandages and instruments for mothers; the provision of nutritive foods and meals in necessitous cases for children and for mothers during a limited period of pregnancy or after parturition; an orthopaedic service for children, including an orthopaedic clinic and hospital provision; the hospital treatment of children up to five years of age; the treatment in hospital or otherwise of cases of ophthalmia neonatorum; provision for the convalescence of mothers or children; dental treatment for mothers and children under five, including the provision of dentures; home visitation by health visitors, the home nursing of expectant mothers, maternity nursing, the home nursing of puerperal fever, measles, whooping cough, epidemic diarrhoea in young children and ophthalmia neonatorum. The arrangements made in any locality to attend to the health of expectant mothers, nursing mothers and of children under five not attending a public elementary school, vary according to the policy of the welfare authority, but are always subject to the sanction of the M. of H. (c). Many of the services included in a maternity and child welfare scheme are provided without cost to the patient, particularly home visitation and advice, but other services such as hospital treatment or the provision of nutritive food or meals are given at a charge depending on the economic circumstances of the family concerned. See title MATERNITY AND CHILD WELFARE. [66]

**Meat Inspection.**—A departmental committee of the M. of H. has considered the whole subject of meat inspection in its relation to the public health, the uniformity of meat inspection, the variation in amount of meat inspection and the variations in standards. With a view to securing greater uniformity and improved methods, the Ministry issued a memorandum (d) on the subject in 1922 and recommended its adoption by local authorities and their officers. Medical officers of

(b) See definition of "welfare authority" in P.H.A., 1936, s. 200; and see s. 204 of that Act; 29 Halsbury's Statutes 460, 463.

(c) See Maternity and Child Welfare Act, 1918, s. 1; 11 Halsbury's Statutes 742, which will be replaced by P.H.A., 1936, s. 204.

(d) M. of H. Memorandum, No. 62 (Foods), March, 1922.

health usually adopt the standards laid down in this memorandum and put into practice its various recommendations. [67]

**Meat Regulations.**—The council of a borough or district are required to enforce the Public Health (Meat) Regulations, 1924 and 1935 (e), in their area. Port health authorities are also required to execute in their district Part VI. of the regulations relating to transport and handling. The regulations contain provisions as to slaughter-houses, slaughtering, meat marking, stalls, shops, stores, etc., and transport and handling. The purpose of Part II. of these regulations is mainly to secure, as far as possible, that diseased or unsound meat shall not be placed on the market for human consumption. Inspection of carcasses is therefore highly necessary. Notice must be given to the M.O.H. of the fixed times and fixed days for slaughtering, and in addition at least three hours' notice of any other slaughtering, while special conditions are laid down as to emergency slaughter. If on the slaughter of an animal for sale for human consumption disease is found, a notification must be sent forthwith to the M.O.H. Opportunities must be given for the inspection of a carcase and its internal organs before removal. Part III. of the regulations deals with the marking of carcasses under conditions to be approved by the M. of H. by an inspector of the council, provided he has inspected the whole carcase with the organs in position. Part IV. of the regulations deals with the cleanliness of stalls and sets out the conditions to be observed when offering meat for sale. Part V. lays down similar requirements with regard to shops, stores, etc. Part VI. deals with the conditions to be observed when transporting and handling meat. It is the general duty of the M.O.H. acting under the direction of the council to secure that the requirements of the regulations are observed. [68]

**Medical Relief.**—County councils and county borough councils are required to appoint district medical officers for every medical relief district (f), and the duties of such medical officers are set out in art. 166 of the Public Assistance Order, 1930. The administration of this medical service is generally placed in the hands of the M.O.H., and under art. 166 (7) of the Order of 1930, the district medical officer is required to furnish to the M.O.H. of the area such information as the Minister or the council may from time to time require with respect to cases of sickness or death amongst poor persons under his care. The relationship of the M.O.H. to the district medical officer is mainly of an administrative character. The M.O.H. should intervene as little as possible between the district medical officer who is employed by the council to perform clinical duties and the patients whom the district medical officer is required to treat; see title POOR LAW MEDICAL OFFICERS. [69]

**Milk.**—Milk and its derivatives in relation to health and nutrition are of great importance. Many Acts, orders and regulations have been passed with the object of securing a safe and wholesome milk supply. It is the duty of the local authority to secure the observance of these ordinances, but as they are generally designed in the interests of public health, the M.O.H. is usually charged with the duty of executing them, subject to the direction of the local authority. [70]

(e) S.R. & O., 1924, No. 1482; 1935, No. 187.

(f) Public Assistance Order, 1930, art. 142; S.R. & O., 1930, No. 185; 12 Halsbury's Statutes 1075.

*Cream.*—The Artificial Cream Act, 1929 (*g*), regulates the sale of "artificial cream," as defined in sect. 6 of the Act. This is the substance commonly known as reconstituted cream, usually prepared by emulsifying butter, dried or skimmed milk and water. The Act is administered by the local authorities for food and drugs (*h*), and subject to the exceptions indicated in the proviso to sect. 2 (1) of the Act all premises where artificial cream is manufactured or sold must be registered with the food and drugs authority. See titles ARTIFICIAL CREAM and CREAM. [71]

*Condensed Milk.*—The local authority for the execution of the regulations (*i*) is again the food and drugs authority. Under art. 5, the M.O.H. and any person authorised by him, or by the authority in writing, may procure samples of condensed milk and submit such samples to the public analyst. The seller must forthwith be notified of the intention to have the samples analysed by the public analyst, and samples must be divided in accordance with the provisions of the Food and Drugs (Adulteration) Act, 1928 (see title SAMPLING OF FOOD AND DRUGS), except where the sample is procured for testing for the equivalent quantity of liquid milk (art. 5 (2)). If the local authority consider a consignment of condensed milk deposited in their area and intended for sale for human consumption does not comply with the regulations, they must endeavour to trace where it was manufactured and labelled (art. 7). If such place is in England or Wales, the facts must be communicated to the local authority for the district concerned, but if not in England or Wales to the M. of H. See title CONDENSED MILK.

*Dried Milk.*—The local authority for the enforcement of the Dried Milk Regulations (*j*) is also the food and drugs authority. The regulations deal with the labelling and composition of dried milk, and closely resemble the Condensed Milk Regulations already referred to. See title CONDENSED MILK. [72]

*Graded Milks.*—The Milk (Special Designations) Order, 1936 (*k*), prescribes the terms and conditions subject to which licences may be issued for the sale of milk designated as "tuberculin tested" "accredited" or "pasteurised" (*l*).

On receipt of an application in writing for a licence and of the prescribed fee, the M.O.H. of the licensing authority (*m*) causes investigations to be made as to the arrangements for the production, storage, treatment and distribution of the milk, and reports the results to the licensing authority, who, before granting a licence, must be satisfied that the conditions upon which the licence may be granted are fulfilled. Samples of designated milks are taken from time to time for bacteriological tests to ascertain if the standards required for designated milk are maintained. If a licensing authority are satisfied that there has been a breach of any of the conditions subject to which a licence is granted, they may suspend or revoke the licence, but not until the holder of the licence has been given an opportunity of making

(*g*) 8 Halsbury's Statutes 908.

(*h*) As to these, see title FOOD AND DRUGS AUTHORITIES.

(*i*) Public Health (Condensed Milk) Regulations, 1923 and 1927; S.R. & O., 1923, No. 509; 1927, No. 1092.

(*j*) Public Health (Dried Milk) Regulations, 1923 and 1927; S.R. & O., 1923, No. 1323; 1927, No. 1093.

(*k*) S.R. & O., 1936, No. 356.

(*l*) *Ibid.*, art. 3.

(*m*) *Ibid.*, arts. 2 (1), 4 (1).

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representations to the licensing authority (n). See title MILK AND DAIRIES. [73]

*Imported Milk.*—The Public Health (Imported Milk) Regulations, 1926 (o), are administered by the port health and riparian authorities, and the M.O.H. is the officer usually entrusted, subject to the direction of the authority, with the enforcement of the regulations. The authority must keep a register of persons to whom milk imported into their district is consigned and authorise officers to take samples (art. 3); serve notice on an importer, whose imported milk has been found to contain more than 100,000 bacteria per cubic centimetre or tubercle bacilli, to appear before them to show cause why they should not remove his name from the register, and if he fails to show cause to their satisfaction may remove him from the register accordingly (art. 6). The importer may appeal against the decision of the authority to remove his name from the register to a court of summary jurisdiction, and the authority must notify to the Minister any case of a removal from the register. See title IMPORTED FOOD. [74]

*Milk and Dairies.*—The Milk and Dairies Order, 1926 (p), places important duties on borough and district councils as to the registration of premises, notices and requirements for securing the cleanliness of dairies, etc., and for protecting milk against infection and contamination, together with special provisions applicable to cowkeepers, buildings used for the sale, etc., of milk and the conveyance and distribution of milk, churns, etc. The M. of H. have suggested that these councils may find the task of administering the order sensibly lightened by co-operation with the county agricultural education authority, whose educational work, so far as it deals with the production of clean milk, has substantially the same objects as the order of 1926. The M.O.H. is usually entrusted with the administration of the order so far as it relates to the duties already indicated, subject to the directions of the authority. See title MILK AND DAIRIES. [75]

*Registration of Retailers of Milk.*—Borough and district councils are required to keep two registers (q): (1) of retail purveyors of milk, and (2) of wholesale traders and producers who do not sell milk by retail (r). A council may refuse to register or may remove from the register any retail purveyor of milk if they are satisfied that the public health is likely to be endangered by any act or default of such retailer in relation to the quality, storage or distribution of the milk (s). The duty is usually imposed on the M.O.H. of reporting to his council any act or default of the person concerned which might warrant them in such a refusal or removal from the register. Before finally refusing to register or removing from the register, as the case may be, the council must serve notice on the retail purveyor giving him the opportunity to appear before them to show cause why he should not be refused or his name not removed, and the notice must set out the reasons for the proposed refusal or removal (s). If the council decide to refuse the application

(n) Circular No. 1533, M. of H., dated April 24, 1936, and M. of H. Memorandum of 1936, No. 197 (Foods).

(o) S.R. & O., 1926, No. 820.

(p) *Ibid.*, No. 821.

(q) Milk and Dairies (Amendment) Act, 1922, s. 2 (3); 8 Halsbury's Statutes 880.

(r) Milk and Dairies Order, 1926, art. 6. Circular of M. of H., No. 757, January 20, 1927, paras. 15—17.

(s) Milk and Dairies (Amendment) Act, 1922, s. 2 (1); 8 Halsbury's Statutes 879.

or remove the retailer from the register, they must notify the person of their decision, when he may appeal to a court of summary jurisdiction. The court before whom a registered purveyor of milk is convicted of any offence relating to milk may, on the application of the council, remove him from the register (*i*). See title MILK AND DAIRIES. [76]

**Sampling.**—A county or local M.O.H., or other person authorised by the council may within their area take for examination samples of milk before delivery to the consumer (*u*). The procedure for the taking of samples in sects. 16, 17 of the Food and Drugs (Adulteration) Act, 1928 (*a*), should be followed. The M.O.H. or other authorised officer may by notice in writing require the M.O.H. or other authorised officer of another authority (being a food and drugs authority) to take samples of milk from a dairy or in transit (*b*). Upon receipt of such a notice, the M.O.H. or other authorised officer must cause samples to be taken and forward a part of any sample so taken for analysis or bacteriological examination to the authority which required the sample to be taken. If required, the sample must be taken in accordance with the Food and Drugs (Adulteration) Act, 1928. See title SAMPLING OF FOOD AND DRUGS. [77]

**Standards.**—The regulations prescribing standards as to the fat and solid contents of milk (*c*), the milk solids in skimmed milk (*d*) and the proportion of water in butter (*e*) are enforced by the local authorities under the Food and Drugs (Adulteration) Act, 1928 (*f*), and their administration may be part of the duties of the M.O.H. if so prescribed by the local authority. See title BUTTER, MARGARINE AND CHEESE. [78]

**Tuberculosis.**—Milk produced by cows suffering from notifiable tuberculosis must not be mixed with other milk until the cow has been examined by a veterinary surgeon (*g*). Animals suffering from notifiable tuberculosis may not be imported into this country (*h*).

No person may be engaged in the milk trade who is aware that he is suffering from tuberculosis of the respiratory tract (*i*). The M.O.H. must report in writing to the borough or district council on any person residing in his district engaged in the milk trade who is suffering from tuberculosis of the respiratory tract and is in an infectious state (*ibid.*, art. 5). The local authority may then by notice signed by the clerk or the M.O.H. require such person to discontinue his employment or occupation within not less than seven days from the date of such notice (*ibid.*). The person concerned has a right of appeal to a court of summary jurisdiction (art. 6), and the person concerned may claim compensation under sect. 308 of P.H.A., 1875 (*k*).

It is an offence to sell, offer for sale, or expose for sale, the milk

(*i*) Milk and Dairies (Amendment) Act, 1922, s. 2 (*2*).

(*u*) Milk and Dairies (Consolidation) Act, 1915, s. 8; 8 Halsbury's Statutes 808.

(*a*) 8 Halsbury's Statutes 804, 805.

(*b*) Milk and Dairies (Consolidation) Act, 1915, s. 8 (*3*); 8 Halsbury's Statutes 809.

(*c*) Sale of Milk Regulations, 1901; S.R. & O., 1901, No. 657.

(*d*) Sale of Milk Regulations, 1912; S.R. & O., 1912, No. 687.

(*e*) Sale of Butter Regulations, 1902; S.R. & O., 1902, No. 355.

(*f*) As to these, see title FOOD AND DRUGS AUTHORITIES.

(*g*) Tuberculosis Order, 1925 (No. 1), art. 10; S.R. & O., 1925, No. 681 of M. of A. & F.

(*h*) *Ibid.*, art. 14.

(*i*) Public Health (Prevention of Tuberculosis) Regulations, 1925, art. 4; S.R. & O., 1925, No. 757.

(*k*) 13 Halsbury's Statutes 755.

of any cow suffering from tuberculosis of the udder, or from certain other complaints (*l*), but on proceedings under this section proof must be given that the person charged with an offence had previously received notice from the local authority, or knew, or could have ascertained, that the cow had given tuberculous milk or was suffering from any such disease. The sale, or offer or exposure for sale, of the milk of a cow suffering from tuberculosis of the udder was prohibited later by sect. 5 of the Milk and Dairies (Amendment) Act, 1922 (*m*).

The M.O.H. of a county or county borough (and of any non-county borough which is a diseases of animals authority if the M. of H. so directs by order) is required to initiate the procedure to stop a milk supply if he is of opinion that tuberculosis is caused or is likely to be caused by the consumption of milk from any dairy in his area (*n*). It is the duty of every county council or county borough council to cause to be made such inspections of cattle as may be necessary and proper for the purposes of the Milk and Dairies (Consolidation) Act, 1915, and the Milk and Dairies Order, 1926 (*o*). The M.O.H. reports the matter to the council, submitting at the same time any bacteriological or veterinary reports which he may have obtained (*p*). The council may, after giving the dairyman an opportunity to appear before them or furnish an explanation in writing, make an order stopping the milk supply, and the order remains in force until withdrawn by the council or a court on appeal by the dairyman. Full compensation is payable to the dairyman unless the order is made in consequence of the default or neglect of the dairyman. [79]

If the M.O.H. of a borough or district suspects that tuberculous milk is being sold in his area, he must ascertain the source of supply and give notice to the M.O.H. of the county or county borough in which the suspected cows are kept (*q*). On receipt of this information, the latter M.O.H. is required to take steps to have the cattle in the dairy inspected and all other necessary investigations made. Notice of the time of inspection must be given to the dairyman and to the borough or district council whose M.O.H. gave the notice, to allow the M.O.H. or another officer to be present at the inspection. The M.O.H. of the county or county borough council must furnish the M.O.H. who gave the notice with copies of veterinary, bacteriological, or other reports which he obtains and an account of the action taken (*q*). The Minister of Agriculture and Fisheries has made an order providing for the slaughter of bovine animals affected with certain forms of tuberculosis and the payment of compensation in respect of animals so slaughtered (*r*). This order should be administered in conjunction with the foregoing provisions so as to secure the slaughter of affected animals in pursuance of the order. If the carcase of an animal slaughtered is intended for human consumption, a copy of the notice of intended slaughter sent to the owner must also be sent to the sanitary authority of the district, with particulars of place and time of slaughter. No carcase may be removed from the premises or disposed of for human

(*l*) Milk and Dairies (Consolidation) Act, 1915, s. 5; 8 Halsbury's Statutes 868.  
(*m*) 8 Halsbury's Statutes 881.

(*n*) Milk and Dairies (Consolidation) Act, 1915, s. 3; 8 Halsbury's Statutes 866.

(*o*) Milk and Dairies Order, 1926, art. 8; S.R. & O., 1926, No. 821.

(*p*) Milk and Dairies (Consolidation) Act, 1915, s. 3, Sched. I.; 8 Halsbury's Statutes 866, 876.

(*q*) *Ibid.*, s. 4; *ibid.*, 867.

(*r*) Tuberculosis Order, 1925 (No. 1), of M. of A. & F.; S.R. & O., 1925, No. 681.

consumption without the written consent of the M.O.H. or other competent officer of the local authority (s). See title MILK AND DAIRIES. [80]

**Midwives.**—The local supervising authorities under the Midwives Acts, 1902 to 1926 (t), are county councils and county borough councils, but the council of a non-county borough or district may be created a local supervising authority by order of the M. of H. (u). These Acts have recently been amended by the Midwives Act, 1936, with the object of securing that whole-time, salaried midwives shall be available to attend on the birth of a child. Local supervising authorities usually relegate to the M.O.H. the general responsibility for their duties, subject to their direction, and it is the practice to appoint an inspector of midwives on the staff of the M.O.H.

The provisions of the Acts are dealt with in the title MIDWIVES.

[81]

**Nuisances. General.**—By sect. 91 of P.H.A., 1936 (a), the duty of causing their area to be inspected from time to time in order to detect nuisances and have them abated is imposed on every borough and district council. Complaints of nuisances received by the council should be entered in a complaints register. Any complaint received is investigated by the sanitary inspector working under the direction of the M.O.H., and a detailed report of the conditions found is drawn up. If a nuisance exists and legal proceedings are taken for its abatement, the M.O.H. may have to give evidence, especially if the nuisance is injurious to health. Borough and district councils have power to make bye-laws for the prevention of certain nuisances (b), and these bye-laws are usually administered by the health department under the general direction of the M.O.H. See title NUISANCES. [82]

**Smoke.**—By sect. 101 of P.H.A., 1936 (c), a chimney (not being the chimney of a private house) emitting smoke in such quantity as to be a nuisance is declared to be a statutory nuisance, and thus liable to abatement under the Act. In sect. 110 "smoke" is defined as including soot, ash, grit and gritty particles. The health department is generally entrusted with the administration of these provisions, subject to the control of the council, and in this way it becomes the duty of the M.O.H. to cause smoke observations to be made from time to time and to report any smoke nuisance which may occur. The occupier of the premises must be notified by the authorised officer as soon as practicable after he has become aware of the nuisance. The council may make bye-laws regulating the emission of smoke of such colour, density or content as may be prescribed by the bye-laws (d). See title SMOKE ABATEMENT. [83]

**Nursing Homes.**—Nursing homes will be required to be registered by sects. 187 to 195 of P.H.A., 1936, replacing the Nursing Homes

(s) Tuberculosis Order, 1925 (No. 2), of M. of A. & F.; S.R. & O., 1925, No. 781.

(t) 11 Halsbury's Statutes 729, 744, 783.

(u) L.G.A., 1926, s. 62; 10 Halsbury's Statutes 925.

(a) Replacing P.H.A., 1875, s. 92; 13 Halsbury's Statutes 662.

(b) P.H.A., 1936, s. 81, replacing in part P.H.A., 1875, s. 44; *ibid.*, 644.

(c) Replacing P.H.A., 1875, s. 91 (8) and P.H. (Smoke Abatement) Act, 1926, s. 1; *ibid.*, 661, 1157.

(d) P.H.A., 1936, s. 104, replacing P.H. (Smoke Abatement) Act, 1926, s. 2; *ibid.*, 1159.

Registration Act, 1927 (e). The local authorities for the purposes of this Act are the county councils and the county borough councils (sect. 187 (2)), and any non-county borough or district council to whom the power has been delegated by the county council either under sect. 9 of the Act of 1927 or sect. 194 of the Act of 1936. The M.O.H. reports in respect of premises, equipment and staffing when an application for the registration of a nursing home is received, and the council have power to refuse registration if any of the objections indicated in sect. 187 (3) of the Act of 1936 can be taken. Similarly, power is given to the local authority by sect. 188 to cancel a registration. The M.O.H. is responsible for the administration of any bye-laws which may be made by the council under sect. 190 of the Act, and he may visit and inspect any nursing home and the records required to be kept under the Act (sect. 191). The M.O.H. also advises the council on any application received for exemption from registration. See title **NURSING HOMES**. [84]

**Offensive Trades.**—By sect. 107 of P.H.A., 1936 (f), the establishment in a borough or urban district, or in a rural area in which sect. 112 of P.H.A., 1875, is in force on September 30, 1937, of any of the offensive trades indicated in the section is unlawful unless the consent of the council is obtained. The section also allows a council to make an order, to be confirmed by the M. of H., declaring any other trade, business or manufacture to be an offensive trade. By sect. 108 a borough or U.D.C. may make bye-laws as to the trade of fish-frying, on premises or in streets, to prevent any noxious or injurious effects of the trade, and if required by the Minister must make bye-laws. In addition, sect. 108 (2) of the Act of 1936 allows a borough or U.D.C. to make bye-laws as to offensive trades, whether carried on in premises or in streets. These powers could be conferred on a R.D.C. by an order of the Minister, made on an application to him under sect. 13 of the Act, and may be exercised by them without an order if sect. 118 of P.H.A., 1875 (g), is in force in their area on September 30, 1937.

These bye-laws vary for the different trades but in general regulate the storage of offensive material, the cleansing of premises and utensils, efficient drainage and the appropriate treatment of waste-products before discharge. It is the duty of the M.O.H. to advise his council as to whether a special trade should be declared to be an offensive trade, to ensure that the bye-laws regarding offensive trades are observed, to report infringements of the law, and to give evidence in court where legal proceedings are taken by the council. See title **OFFENSIVE TRADES**. [85]

**Poisons.**—Sect. 25 (5) of the Pharmacy and Poisons Act, 1933 (h), makes it a duty of county and county borough councils to take all reasonable steps to secure compliance with the provisions of Part II. of the Act, which relates to poisons, and of the rules as to poisons made under the Act (i). This duty is discharged by the M.O.H. or by an inspector on his staff. See title **POISONS**. [86]

(e) 11 Halsbury's Statutes 785.

(f) Replacing P.H.A., 1875, s. 112; P.H.A. Amendment Act, 1907, s. 51; and P.H.A., 1925, s. 44 (2); 13 Halsbury's Statutes 670, 930, 1184.

(g) 13 Halsbury's Statutes 671.

(h) 26 Halsbury's Statutes 681.

(i) See the Poisons Rules, 1935; S.R. & O., 1935, No. 1239.

**Rag Flock.**—Unclean flock is prohibited for sale and use for the manufacture of upholstery, cushions or bedding (*k*). The M.O.H., the sanitary inspector or any officer authorised by the council may, under sect. 1 (5) of the Rag Flock Act, 1911, take samples of rag flock for analysis and may institute proceedings if specially authorised. See title RAG FLOCK. [87]

**Rats and Mice.**—The Rats and Mice (Destruction) Act, 1919 (*l*), requires steps to be taken for the prevention of infestation by rats and mice, and is enforceable by the county councils, county borough councils and port health authorities, but under the proviso to sect. 2 (1) a county council may delegate their powers to a borough or district council, if that council consent. Instruction as to the most effective methods may be given by public notice under sect. 4, and the council may either serve a notice under sect. 5 on the occupier of land, requiring him to take reasonable and practicable steps for the purpose of destroying rats and mice, or they may themselves after twenty-four hours' notice enter the premises and take such steps and recover the cost from the occupier. The supervision of the administration of the Act in port health districts and vessels has been transferred (*m*) from the Minister of Agriculture and Fisheries to the M. of H. See title RATS AND MICE. [88]

**Rent and Mortgage Interest Restrictions.**—The M.O.H. is responsible for the inspection of houses in respect of which an application is made by the tenant for a certificate that the premises are not in a reasonable state of repair (*n*). The medical officer considers the report of the inspection made and submits his recommendation to the borough or district council, who may grant or refuse the application. After a certificate has been given, and if the necessary work to put the premises into a reasonable state of repair has been executed to the satisfaction of the council, a report is issued to this effect. [89]

**Reports, Annual and Special.**—It is the duty of a county M.O.H. and of a borough or district M.O.H. as soon as practicable after December 31 in each year to make an annual report to the council (*o*) and in every five years a survey report (*p*). The M. of H. issue a memorandum annually, setting out the arrangements and contents of the annual report of an M.O.H. This memorandum requests that information should be given as to the vital statistics of the area; the social conditions of the population; hospital accommodation; clinics, ambulance facilities and home nursing; local Acts and bye-laws and adoptive Acts in force in the area; water supply; drainage; sewerage; scavenging; sanitary inspection; schools; housing; overcrowding; inspection and supervision of food; prevalence and control over infectious disease, including tuberculosis and venereal disease; maternity and child welfare arrangements, including the inspection of midwives; and such other matters as the M.O.H. may consider it

(*k*) Rag Flock Acts, 1911 and 1923; 13 Halsbury's Statutes 940, 1193; Rag Flock Regulations, 1912; S.R. & O., 1912, No. 578.

(*l*) 13 Halsbury's Statutes 968.

(*m*) The M. of H. (Rats and Mice Destruction, Transfer of Powers) Order, 1922; S.R. & O., 1922, No. 948.

(*n*) Increase of Rent, and Mortgage Interest (Restrictions) Act, 1920, s. 2 (2) (4); 10 Halsbury's Statutes 334.

(*o*) Sanitary Officers (Outside London) Regulations, 1935, arts. 6 (3), 17 (5); S.R. & O., 1935, No. 1110.

(*p*) M. of H. circular No. 269, dated December 28, 1921, para. 3.

desirable to report upon. Copies of the report should be sent to the M. of H., the H.O. and, unless the borough is a county borough, the county medical officer, and, if the council are a local supervising authority, to the Central Midwives Board. The M.O.H. is also required by arts. 6 (4) and 17 (6) (*pp*) to forward to the M. of H. a copy of any special reports which he may make. One copy of the annual report of a county M.O.H. should be sent to the council of every borough and district in the county and to their M.O.H., and three copies of any special report to the council of every such borough and district affected by the special report. [90]

**Rivers Pollution.**—The pollution of rivers is dealt with by the Rivers Pollution Prevention Acts, 1876 and 1893 (*g*). The pollution of rivers may be due to solid matters such as sewage, or as a result of manufacturing and mining operations. The local authorities for the purposes of the Acts are borough and district councils (*r*) and county councils (*s*). Joint committees may be formed for several counties so as to constitute one authority for an entire river and its tributaries under sect. 14 (*g*) of L.G.A., 1888, and such joint committees may be given all the powers of county councils and sanitary authorities under the Rivers Pollution Prevention Acts.

The duties of medical officers of health under these Acts are mainly concerned with the ascertainment of pollution and the sources of pollution and the necessary measures to prevent pollution of rivers, streams, canals, lakes and watercourses, and also the sea and tidal waters to such extent as may be determined by an order of the M. of H. after a local inquiry (*t*).

Certain other provisions relating to the pollution of water by gas washings (*u*), for protecting watercourses within a borough or district from pollution arising from sewage either within or without their area (*a*), and for prohibiting the throwing or placing of solid matter which is likely to cause annoyance in any river, stream or watercourse (*b*), are within the sphere of the M.O.H. of a borough or district. See title POLLUTION OF RIVERS. [91]

**Shell-fish.**—The Public Health (Shell-fish) Regulations, 1934 (*c*), make it the duty of the M.O.H. to take steps to ascertain the layings from which any shell-fish suspected of having caused disease, or likely to cause danger to public health, were derived. In such circumstances, the borough or district council may under art. 4 (2) require the fish-monger supplying shell-fish in their area to furnish the M.O.H. with a list of all the layings from which the shell-fish had been obtained during the six weeks prior to the request. If the suspected layings are situate in his area, the M.O.H. is required by art. 4 (3) to make investigation and report to the council and furnish them with copies of any bacteriological or other reports obtained by him. If the layings are

(*pp*) Sanitary Officers (Outside London) Regulations, 1935.

(*g*) 20 Halsbury's Statutes 316, 345.

(*r*) Act of 1876, s. 8; 20 Halsbury's Statutes 320.

(*s*) L.G.A., 1888, s. 14 (1); 10 Halsbury's Statutes 697.

(*t*) Salmon and Freshwater Fisheries Act, 1923, s. 55; 8 Halsbury's Statutes 812.

(*u*) P.H.A., 1875, s. 68; 13 Halsbury's Statutes 653.

(*a*) *Ibid.*, s. 69.

(*b*) P.H.A., 1936, s. 250 (2), replacing P.H.A. Amendment Act, 1890, s. 47; 13 Halsbury's Statutes 842.

(*c*) S.R. & O., 1934, No. 1342; see also M. of H. circular No. 1446, dated December 12, 1934.

outside his area a copy of the report of the M.O.H. and any other information in his possession must be sent to the council in whose area the layings are situate (art. 4 (4)). Upon receipt of this information, that council must instruct their M.O.H. to make investigation and report to them (art. 4 (5)). If satisfied that shell-fish taken from a laying are likely to cause danger to public health, the council of the area where the laying is situate may make an order prohibiting the distribution of shell-fish from the laying for human consumption either absolutely or subject to such exceptions and conditions as they think proper (art. 5 (1)). Prior notice of their intention to make such an order, stating the grounds on which the proposal is made, must be given to all interested parties, who must have a reasonable opportunity of making representations (art. 5 (2)). When an order is made, a copy of it must be served on all interested persons and must be advertised in local newspapers, and warning notices must be posted in conspicuous places in the vicinity of the laying (art. 6). The council must supply a copy of the report of the M.O.H. to any interested person on payment of a reasonable sum (art. 5 (4)). Any person aggrieved by the order may under art. 9 appeal to the M. of H. against the order. All action taken under the regulations must be reported to the M. of H. and the M. of A. & F.

It is desirable that warning notices should indicate that the laying in question is closed by reason of the fact that it has been found that shell-fish taken therefrom are so polluted as to be unfit for human consumption (d). [92]

**Cleansing of Shell-fish.**—Where an order of the kind already mentioned is made, the council should consider whether the circumstances are suitable for the provision of apparatus for the cleansing of shell-fish. The P.H. (Cleansing of Shell-fish) Act, 1932 (e), empowers county councils and borough or district councils to provide tanks or other apparatus for cleansing shell-fish and to make reasonable charges for their use. The M. of A. & F. will be prepared to give advice and assistance to local authorities who contemplate making such provisions. See title SHELL FISH, CLEANSING OF. [93]

**Shops.**—Sect. 10 of the Shops Act, 1934 (f), makes certain provisions for the health and comfort of shop-workers, with special reference, *inter alia*, to ventilation, maintenance of a reasonable temperature and sanitary conveniences. The enforcement of these provisions is a duty of the borough or district council (g), and this duty, so far as sanitary conveniences are concerned, is usually delegated to the M.O.H. or a sanitary inspector on his staff. See title SHOPS. [94]

**Slaughter-Houses.**—The M.O.H. of a borough or district is generally responsible to the council for the control of slaughter-houses in the area. For this purpose inspections are made from time to time to ascertain that the requirements of the statutes, regulations and bye-laws in force in relation to slaughter-houses are observed. The council have power to make bye-laws for the licensing, registering and inspection of slaughter-houses, for preventing cruelty therein and securing their

(d) Para. 5 of circular of M. of H. No. 1446, dated December 12, 1934.

(e) 25 Halsbury's Statutes 468.

(f) 27 Halsbury's Statutes 235. See also memorandum of H.O. on Shops Act, 1934, and the Shops Regulations, 1934; S.R. & O., 1934, No. 1325; 27 Halsbury's Statutes 241.

(g) Act of 1934, s. 13 (3); 27 Halsbury's Statutes 237.



sanitary condition (*h*). The local authority may provide slaughter-houses and must then make bye-laws (*i*). A register of slaughter-houses is kept, usually by the M.O.H. He should ascertain that the points mentioned in the memorandum prefixed to the model bye-laws are complied with when an application for a slaughter-house licence is made. Where an application is made to the council for a renewal of a licence, the M.O.H. should report on the premises and the need for any improvement. See title SLAUGHTER-HOUSES AND KNACKERS' YARDS. [95]

**Slaughter of Animals.**—Slaughtering must be performed in accordance with the Slaughter of Animals Act, 1933 (*k*). The authorities for enforcing this Act are borough and district councils, see sect. 8 (1). Animals in slaughter-houses and knackers' yards must be stunned by a mechanically operated instrument before slaughter. This requirement does not apply to sheep unless the council have passed a resolution to that effect under sect. 2. Goats are included, but they may be excluded by a resolution under sect. 2. Pigs are included if electrical energy is reasonably available, see proviso (a) to sect. 1 (1). Local authorities have the duty under sect. 3 of the Act of licensing slaughtermen. [96]

**Statistical Information.**—An important duty of the county, as well as of the borough or district, M.O.H. is to prepare and examine the vital statistics of his area and present them in tabular form to his council. He should comment on their significance, and in particular deal with the death-rates from epidemic diseases, cancer, tuberculosis, complications of pregnancy and childbirth and any other disease causing or tending to cause a high death-rate. He should compare his figures with the statistics for surrounding areas and the country generally. The information recorded and tabulated deals with population, births (registered and notified under the Notification of Births Acts, 1907 and 1915, replaced by P.H.A., 1936, sects. 200, 202, 203 and 204), deaths, marriages and notified cases of infectious disease. Deaths registered should be classified according to the International List of Causes of Death (*l*) and ages at death. Infant deaths and stillbirths should be recorded, and if possible an investigation made into the circumstances of these mishaps. Crude death-rates, recorded death-rates, standard death-rates, should be given, and quinquennial and decennial rates worked out. Every M.O.H. must include in his annual report information in the form required by the M. of H. (*m*). [97]

**Tents, Vans, Sheds, etc.**—The M.O.H. of a borough or district is responsible for the sanitary supervision of all tents, vans, sheds and similar structures used for human habitation in his area. Such structures should be inspected with the view of preventing or abating nuisances arising in or from them. Special attention should be paid

(*h*) Towns Improvement Clauses Act, 1847, s. 128; 13 Halsbury's Statutes 578, applied to boroughs and urban districts by P.H.A., 1875, s. 169; 13 Halsbury's Statutes 696, and to rural districts by Rural District Councils (Slaughter-Houses) Order, 1924; S.R. & O., 1924, No. 1481.

(*i*) P.H.A., 1875, s. 169; 13 Halsbury's Statutes 696.

(*k*) 26 Halsbury's Statutes 647.

(*l*) Issued on the authority of the Registrar-General for England and Wales, Scotland and Northern Ireland, dated 1931.

(*m*) Sanitary Officers (Outside London) Regulations, 1935, arts. 6 (3), 17 (5); S.R. & O., 1935, No. 1110.

to overcrowding, sanitary accommodation, water supply and the presence of any person suffering from a dangerous infectious disease.

By sect. 268 of P.H.A., 1936 (*n*), the provisions of Part II. of that Act relating to filthy or verminous premises or articles and verminous persons (viz. sects. 83 to 86), of Part III. (Nuisances and Offensive Trades), Part V. (Diseases), Part VII. (Notification of Births, Maternity and Child Welfare and Child Protection) and Part XII. (General Provisions) are applied to tents, etc., as they apply in relation to other premises, and as if a tent, etc., used for human habitation were a house or building so used. By sect. 268 (4) bye-laws may be made by a borough or district council for promoting cleanliness in, and the habitable condition of tents, vans, sheds and similar structures used for human habitation, for preventing the spread of infectious disease by their occupants or other users, and generally for the prevention of nuisances.

Power is thus given to a council to take action to abate nuisances arising from tents, vans, sheds and similar structures. See title **TENTS, SHEDS AND VANS.** [97A]

*Hop, Fruit and Vegetable Pickers.*—Bye-laws may be made under sect. 270 of P.H.A., 1936 (*o*), by a borough or district council, for securing the decent lodging and accommodation of hop-pickers and other persons engaged temporarily in picking, gathering or lifting fruit, flowers, bulbs, roots or vegetables. The M. of H. has also issued a circular to the local authorities of districts where substantial numbers of hop-pickers were lodged (*p*). See title **FRUIT AND HOP PICKERS.** [98]

**Vaccination.**—Sect. 2 of L.G.A., 1929 (*q*), placed the administration of the Vaccination Acts, 1867 to 1908, upon county and county borough councils as functions relating to public health. The public vaccinator and the vaccination officer of these authorities are generally on the staff of the M.O.H., who is responsible for the supervision of their work. The duties of the public vaccinator and vaccination officer are set out in the Vaccination Order, 1930 (*r*). The Public Health (Smallpox Prevention) Regulations, 1917 (*s*), authorise an M.O.H. to vaccinate or re-vaccinate immediate and willing smallpox contacts, free of charge. See title **VACCINATION.** [99]

**Venereal Diseases.**—The Public Health (Venereal Diseases) Regulations, 1916 (*t*), place certain duties on county and county borough councils with regard to venereal disease. The regulations direct councils to prepare schemes for the approval of the M. of H. The schemes must include arrangements for enabling any medical practitioner to obtain free a scientific report on any material which the medical practitioner may submit from a patient suspected to be suffering from venereal disease; for the treatment at and in hospitals or other institutions of persons suffering from venereal disease; and for supplying medical practitioners with salvarsan, or its substitutes, for the treatment and prevention of venereal disease (art. 2 (1)).

(*n*) Replacing Housing of the Working Classes Act, 1885, s. 9; 13 Halsbury's Statutes 808, and P.H.A., 1925, s. 43; 13 Halsbury's Statutes 1133.

(*o*) Replacing P.H.A., 1875, s. 314; 13 Halsbury's Statutes 757, and P.H. (Fruit Pickers Lodgings) Act, 1882, s. 2; 13 Halsbury's Statutes 797.

(*p*) Circular No. 984 of M. of H., dated April 20, 1929.

(*q*) 10 Halsbury's Statutes 885.

(*r*) S.R. & O., 1930, No. 2.

(*s*) S.R. & O., 1917, No. 146.

(*t*) S.R. & O., 1916, No. 467.

The regulations require that all information obtained with regard to any person treated under an approved scheme shall be regarded as confidential (art. 2 (2)). The M.O.H. is responsible for advising his council as to the necessary arrangements for the area and for giving effect to an approved scheme. See title VENEREAL DISEASE. [100]

**Verminous Articles, Premises, Persons and Clothing.**—On a certificate from the M.O.H., a borough or district council may require the cleansing of verminous premises used for human habitation (*u*). If the M.O.H. certifies and the council are satisfied that any article in any premises is verminous or likely to be verminous, the council at their expense may cause the article to be cleansed, disinfected or destroyed (*x*).

On a report of the county, borough or district M.O.H. that a person or his clothing is verminous, a county council or borough or district council may have him removed to a cleansing station, either with his consent or by order of a court of summary jurisdiction if he does not consent (*a*).

A county council or borough or district council may provide necessary cleansing stations and apparatus for the cleansing of verminous premises, persons and their clothing (*b*), and it usually comes within the duties of the M.O.H. to decide on requests made for these services. See title DISINFECTION. [101]

**Water Supply.**—Sect. 111 of P.H.A., 1936 (*c*), requires borough and district councils to take steps for ascertaining the sufficiency and wholesomeness of the water supplies within their area. The section also requires the council to provide a supply to every part of their area in which danger to health arises from the insufficiency or unwholesomeness of the existing supply and a general scheme is required which can be carried out at a reasonable cost. But this provision is subject to sect. 116 (2) of the Act, which forbids a council to take steps for the supply of water in any area which is within the limits of supply of any statutory water undertakers without the consent of those undertakers. Powers to compel owners of individual houses to secure the provision of a sufficient water supply are contained in sects. 187 to 189 of the Act of 1936 (*d*). The M. of H. requires the M.O.H. to report annually on the water supply of his area, and in the past the enforcement of many of the council's powers has been initiated by the M.O.H. [102]

#### 4. PORT MEDICAL OFFICER OF HEALTH

It may be said that the port health authorities exercise over the waters, docks and wharves, of a port, and the shipping therein, the same authority as sanitary authorities exercise on land, with certain additional duties, see title PORT HEALTH AUTHORITIES. The port M.O.H. is

(*u*) P.H.A., 1936, s. 83; 29 Halsbury's Statutes 388; replacing P.H.A., 1925, s. 46; 13 Halsbury's Statutes 1135.

(*a*) *Ibid.*, s. 84; replacing *ibid.*, s. 45; *ibid.*, 1134.

(*b*) *Ibid.*, s. 85; replacing Cleansing of Persons Act, 1897, s. 1; *ibid.*, 874, and P.H.A., 1925, s. 48; *ibid.*, 1136.

(*c*) *Ibid.*, ss. 86, 271; replacing *ibid.*, s. 1; *ibid.*, 874, and *ibid.*, s. 49; *ibid.*, 1136.

(*d*) Replacing P.H. (Water) Act, 1878, s. 3; 20 Halsbury's Statutes 241, and extending it to boroughs and urban districts.

(*e*) Replacing P.H.A., 1875, s. 62; 13 Halsbury's Statutes 651, and P.H. (Water) Act, 1878, ss. 3, 4, 6; 20 Halsbury's Statutes 241—244.

accordingly concerned with matters affecting the health of the port, in the same way that an M.O.H. of a borough or district is concerned with matters affecting the health of his area, including nuisances, smoke abatement, canal boats, meat regulations and shell-fish, all of which are dealt with under headings or sub-headings to this article. A port M.O.H. is also required to make an annual report (e). The special duties which are assigned to the port medical officer are in relation to imported food stuffs, infectious diseases and living accommodation in ships, and sometimes the medical inspection of aliens (ee). [103]

**Imported Food Stuff.**—The duties and responsibilities of a port M.O.H. in relation to imported food stuffs are dealt with elsewhere in this article, see *ante*, pp. 12, 13, 34. [104]

**Infectious Disease.**—As regards ships arriving from foreign ports the duties of the port M.O.H. are devised to prevent as far as possible the importation of infectious disease into this country. His duties therefore include the medical inspection of persons arriving from infected countries for the purposes of detection of infection and the isolation of the case or cases; disinfection of articles; disinfection of such parts of the ship as may be necessary; and in the case of plague the prevention of the landing of ship rats and deratisation. To enable him to perform these duties adequately the M. of H. supply the port M.O.H. weekly with information of the chief infectious diseases at foreign ports. It is equally important that the port M.O.H. should receive information as to health conditions of ships on their arrival, particularly in regard to infectious disease. These matters are all dealt with in the Port Sanitary Regulations, 1933 (f), in art. 2 of which "medical officer" is defined as the M.O.H. of a sanitary authority and "sanitary authority" is defined as a port health authority, and the council of every borough or district whose area includes or abuts on waters which are part of a customs port but are not within the jurisdiction of a port sanitary authority. These regulations are consolidating regulations and include provisions for carrying out obligations assumed by the Government under the International Sanitary Convention of Paris, 1926, for preventing the access of rats to ships, and for the control of persons embarking in outward bound ships who are suffering from infectious disease or who have been in such relations with persons so suffering as to render them liable to transmit the disease. Under art. 28, the regulations are executed by the sanitary authority and by every officer of a sanitary authority in so far as he is directed so to do by the sanitary authority, and for the purposes of the regulations the sanitary authority may, and if so required by the Minister of Health must, appoint one or more duly qualified medical practitioners for the purpose of performing and of assisting the M.O.H. of the sanitary authority in the performance of the duties assigned to the medical officer by the regulations and pay any such practitioner such reasonable remuneration for his services as the Minister may approve. The sanitary authority may give directions as to which of the duties assigned to the M.O.H. by the regulations are to be performed by any medical practitioner appointed by them (including the M.O.H.), but the authority must direct their M.O.H., or in his absence the medical officer authorised

(e) See definitions of "local authority" and "district" in Sanitary Officers (Outside London) Regulations, 1935, art. 2; S.R. & O., 1935, No. 1110.

(ee) As to powers of Minister to make regulations, see P.H.A., 1936, Sched. I.

(f) S.R. & O., 1933, No. 88. See also P.H.A., 1936, s. 2 (2).

to act in his place, to perform the duties imposed by the regulations in relation to the signing and issuing of certificates and statements.

The requirements contained in the regulations are fully set out on pp. 229—236 of Vol. VII. [105]

**Living Accommodation in Ships.**—The port M.O.H. is mainly concerned with the accommodation provided for crews. The standard for such accommodation is laid down by the Board of Trade (g). The port M.O.H. acting under the direction of the port health authority is empowered to require the best sanitary conditions of living within the limitations of the standards laid down. [106]

**Medical Inspection of Aliens.**—Under the Aliens Order of 1920 (h), the H.O. is responsible for the exclusion of undesirable aliens. Their undesirability may be on medical grounds. All aliens are therefore liable to medical inspection at any of the ports scheduled for the landing of aliens. The M. of H., with the concurrence of the Home Secretary, is empowered to appoint medical inspectors at each scheduled port and to issue instructions to them. By agreement with the port health authorities concerned the port medical officers of health act as medical inspectors. [107]

#### 5. POWER OF ENTRY

Sect. 108 (5) of L.G.A., 1938 (i), provides that a county M.O.H. shall, for the purposes of his duties, have the same power of entry as are conferred on an M.O.H. of a county district, *i.e.* of a non-county borough or urban or rural district (see sect. 805).

The M.O.H. for a borough or district is required to deal with sanitary defects on premises of various descriptions, and on that account is given a right of entry to such premises for the performance of his duties. In some instances, as in sect. 116 of P.H.A., 1875 (k), as to unsound food, or sect. 102 of the Factory and Workshop Act, 1901 (l), as to the inspection of retail bakehouses, the M.O.H. may expressly be given a power of entry, but more commonly this power is conferred on any officer of the council duly authorised by them. In general this latter plan has been adopted in the P.H.A., 1936 (see *e.g.* sects. 241 (4), 255 (2) and 287 (1)), but the definition of "authorised officer" in sect. 343 provides that the M.O.H., surveyor and sanitary inspector of a council are, by virtue of their appointments, to be deemed to be authorised officers for the purpose of matters within their respective provinces. Nevertheless where entry is claimed under the general provision in sect. 287, an authorised officer is directed, if required, to produce a duly authenticated document showing his authority, and it seems advisable that the M.O.H. should be supplied with a document, certified by the clerk under sect. 286, indicating that the bearer was appointed M.O.H. and describing in general terms the matters which are within his province. Sect. 287 (2) contemplates that if admission is refused, or a refusal is apprehended, or the premises are unoccupied

(g) "Instructions as to the Surveying of Masters' and Crews' Spaces," issued by Board of Trade.

(h) S.R. & O., 1920, No. 448, as amended S.R. & O., 1925, No. 760.

(i) 26 Halsbury's Statutes 560.

(k) 13 Halsbury's Statutes 672.

(l) 8 Halsbury's Statutes 569.

or the occupier is temporarily absent, or the case is one of urgency, or an application for admission would defeat the object of the entry, a justices' warrant should be obtained authorising the officer to enter, if need be by force. An authorised officer entering premises may take with him such other persons as may be necessary (sect. 287 (3)). It should be observed that these provisions apply only where the entry is claimed for a purpose within the scope of the Act of 1936 and described in sect. 287 (1) of the Act, and that by the proviso to the sub-section, unless the premises are a factory, workshop or work-place, admission cannot be demanded as of right without twenty-four hours' notice of the intended entry to the occupier. Moreover the Act of 1936 does not come into operation before October 1, 1937 (see sect. 347).

For purposes within the unrepealed provisions of P.H.A., 1875, the powers of entry in sects. 116, 119 and 305 of that Act (*m*) still remain.

In the following table are indicated the most important of the purposes for which an entry to premises may be claimed, the statute or regulations by which the power is conferred, and the officer or other persons on whom a power of entry is conferred. The table is not exhaustive, and does not cover instances in which a power of entry is given to the sanitary inspector or surveyor as such, but not to the M.O.H. [108]

TABLE OF ENACTMENTS, ETC., CONFERRING POWER OF ENTRY

Purpose.	Statute or Regulations giving the Power.	Persons on whom Power conferred.
BAKEHOUSES (RETAIL).—Sanitary regulation of.	Factory and Workshop Act, 1901, sects. 102, 119; 8 Halsbury's Statutes 569, 581.	M.O.H. given the powers of entry of a factory inspector under sect. 119 of the Act; 8 Halsbury's Statutes 581.
CANAL BOATS.—On suspected contravention of Act or regulations or infectious disease on board.	P.H.A., 1936, sect. 255 (2), replacing Canal Boats Act, 1877, sect. 5; 13 Halsbury's Statutes 790.	Authorised officer of local authority or port health authority.
COMMON LODGING-HOUSES.—(1) Inspection of.	P.H.A., 1936, sect. 241 (4), replacing P.H.A., 1875, sect. 85; 13 Halsbury's Statutes 659.	Authorised officer of local authority.
(2) Verification of notifiable disease in.	P.H.A., 1936, sect. 243, replacing P.H.A., 1925, sect. 58; 13 Halsbury's Statutes 1140.	M.O.H. if authorised by justice's warrant.
CONDENSED MILK.—Inspection of premises where prepared, etc.	Public Health (Condensed Milk) Regulations, 1923, art. 6; S.R. & O., 1923, No. 509.	Any officer of the local authority duly authorised in writing.
DAIRIES.—Enforcement of Milk and Dairies Order and regulations.	Milk and Dairies (Consolidation) Act, 1915, sect. 2; 8 Halsbury's Statutes 806.	The local authority and their officers to have the right of admission given by sect. 102 of P.H.A., 1875 ( <i>n</i> ).

(*m*) 13 Halsbury's Statutes 672, 673, 753.

(*n*) This section is repealed by P.H.A., 1936, but a reference to s. 287 of that Act is apparently substituted by s. 38 (1) of the Interpretation Act, 1889; 18 Halsbury's Statutes 1005.

Purpose.	Statute or Regulations giving the Power.	Persons on whom Power conferred.
DRIED MILK.—Inspection of premises where prepared, etc.	Public Health (Dried Milk) Regulations, 1923, art. 6; S.R. & O., 1923, No. 1323.	Any officer of the local authority duly authorised in writing.
FOOD.—(1) Room used for preparation for sale with certain exceptions.	(1) P.H.A., 1925, sect. 72 (5); 13 Halsbury's Statutes 1149.	(1) M.O.H., sanitary inspector and any other officer duly authorised in writing.
(2) Examination of Unsound articles of food for sale, etc.	(2) P.H.A., 1875, sect. 116; P.H.A. Amendment Act, 1890, sect. 28 (1); 13 Halsbury's Statutes 672, 885.	(2) M.O.H. or sanitary inspector.
(3) Room or place, stall or vehicle to which Public Health (Meat) Regulations, 1924, apply.	(3) Public Health (Meat) Regulations, 1924, art. 4; S.R. & O., 1924, No. 1432.	(3) M.O.H., sanitary inspector and any other officer of a local authority or port health authority duly authorised in writing.
FOOD AND DRUGS.—Adulteration of, taking of samples of food or drugs.	Food and Drugs (Adulteration) Act, 1928, ss. 16, 22 (2); 8 Halsbury's Statutes 894.	M.O.H., sanitary inspector, weights and measures or market inspector or police constable.
HOUSING.—For purposes indicated in Housing Act, 1930, sect. 157.	Housing Act, 1930, sect. 157, replacing Housing Act, 1925, sect. 127, as amended.	Any person authorised in writing by local authority or M. or H. stating the purpose for which entry is authorised.
IMPORTED FOOD.—Examination of where landed, on board ship or before landing.	Public Health (Imported Food) Regulations, 1925, art. 7; S.R. & O., 1925, No. 273.	M.O.H. of port health authority or other local authority.
POISONS.—Enforcement of Part II. (Poisons) of Act of 1933.	Pharmacy and Poisons Act, 1933, sect. 25 (6); 26 Halsbury's Statutes 581.	Poisons inspectors appointed by county and county borough councils.
PORT SANITARY REGULATIONS.—Entry on ships for purposes of.	Port Sanitary Regulations, 1933, art. 29; S.R. & O., 1933, No. 38.	M.O.H. of port health authority or of borough or district within or abutting on a customs port, and not within a port health district, also any doctor employed by the authority to execute the regulations.
PRESERVATIVES IN FOOD.—Premises where articles of food prepared, etc.	Public Health (Preservatives in Food) Regulations, 1927, art. 6 (1); S.R. & O., 1925, No. 775.	Any officer of an authority who are a food and drugs authority under sect. 13 of Food and Drugs (Adulteration) Act, 1928; 8 Halsbury's Statutes 893.
PUBLIC HEALTH.—(1) For purposes within scope of P.H.A., 1936, and described in sect. 287 (1).	(1) P.H.A., 1936, sect. 287 (1).	(1) Any "authorised officer" of the council. For meaning, see <i>ante</i> , p. 46.
(2) For purposes of P.H.A., 1875, so far as not repealed by P.H.A., 1936.	(2) P.H.A., 1875, sect. 305; 13 Halsbury's Statutes 753.	(2) The local authority or any of their officers, on order of justices being obtained, may enter at all reasonable times between 9 a.m. and 6 p.m., and may lay open lands and premises.

Purpose.	Statute or Regulations giving the Power.	Persons on whom Power conferred.
SLAUGHTER - HOUSES.—(1) Examination whether carcasses unfit for food.	(1) Towns Improvement Clauses Act, 1847, sect. 131; 13 Halsbury's Statutes 574, as applied to boroughs and urban districts by P.I.A., 1875, sect. 160; 13 Halsbury's Statutes 696.	(1) M.O.H., sanitary inspector or any other officer appointed by the council, with or without assistants.
(2) Observance of Public Health (Meat) Regulations, 1924.	(2) Public Health (Meat) Regulations, 1924, art. 4; S.R. & O., 1924, No. 1432.	(2) M.O.H., sanitary inspector and any other officer of a local authority or port health authority duly authorised in writing.
SLAUGHTER-HOUSES AND KNACKERS' YARDS.—To ascertain whether any contravention of Slaughter of Animals Act, 1933.	Slaughter of Animals Act, 1933, sect. 7; 26 Halsbury's Statutes 651.	Any M.O.H. or any sanitary inspector duly appointed by the borough or district council (o).
WORKSHOPS AND WORKPLACES.—Entry and inspection of.	Factory and Workshop Act, 1901, sect. 125; 8 Halsbury's Statutes 583.	Borough and district councils and their officers given the powers of entry and inspection of a factory inspector under sect. 119 of the Act; 8 Halsbury's Statutes 581.

[109]

## 6. LONDON

**County M.O.H.**—The M.O.H. for the County of London will in future be appointed under sect. 7 of the P.H. (London) Act, 1936 (p), which allows the L.C.C. to appoint one or more medical officers of health for the county. The M.O.H. for the County of London also acts as school medical officer and tuberculosis officer. Under sect. 7 (2) of the Act of 1936 (q), the county medical officer must be registered in the medical registrar as the holder of a diploma in sanitary science, public health or State medicine. By sect. 7 (3) of the Act (r), the county medical officer has the same powers of entry on premises as are conferred by or under the Act of 1936 or any other Act on an M.O.H. for a borough.

Sect. 183 of the Housing Act, 1936 (s), empowers the L.C.C., with the consent of the M. of H., to appoint legally qualified practitioners for the purpose of carrying out any part of that Act; any such officer and any M.O.H. appointed by the L.C.C. is to be deemed to be an M.O.H. of a local authority within the meaning of the Act.

The provisions in sect. 154 of the Housing Act, 1936, as to "official representations," extends to London, and under the definition of that expression in sect. 188 includes a representation made by the county

(o) Apparently this means any sanitary inspector of the council authorised by them.

(p) Replacing L.G.A., 1888, s. 17; 10 Halsbury's Statutes 690.

(q) Replacing *ibid.*, s. 18.

(r) Replacing Housing, Town Planning, etc., Act, 1909, ss. 68 (4), 70; 10 Halsbury's Statutes 846, 847.

(s) Replacing Housing Act, 1925, s. 130 (3) (4); 13 Halsbury's Statutes 1063, 1069.



M.O.H., and forwarded by the L.C.C. to the metropolitan borough council. [110]

**Medical Officers of Borough Councils.**—Medical officers of health of metropolitan boroughs are appointed under sect. 8 of the P.H. (London) Act, 1936 (*f*), which requires every sanitary authority (*i.e.* the City corporation and a borough council) to appoint one or more medical officers of health. To be qualified for appointment a candidate must be registered in the medical register as the holder of a diploma in sanitary science, public health or State medicine (sect. 8 (*g*)). One M.O.H. may, with the sanction of the M. of H., be appointed for two or more sanitary districts (boroughs), see sect. 8 (*2*). The medical officer must, except in certain cases, reside in the district or within one mile thereof (sect. 8 (*4*)). A medical officer may exercise any of the powers of a sanitary inspector, and the annual report of the medical officer to the borough council must be appended to the annual report of the council under sect. 61 of the L.C.C. (General Powers) Act, 1929 (*u*).

By sect. 11 of the P.H. (London) Act, 1936 (*a*), a M.O.H. of a district or of the port health authority (*b*) may not be appointed for a limited period only, and is removable only by the M. of H., or with the consent of the Minister, but the Minister must take into consideration representations made to him by a sanitary authority for the removal of a medical officer. Sect. 10 enables a sanitary authority to make temporary arrangements, subject to the Minister's consent, for the performance of the duties of the M.O.H.

The mode of appointment, qualifications, tenure of office and the amount and mode of payment of salaries are, subject to express provisions in the P.H. (London) Act, 1936, to be governed by regulations of the M. of H. made under sect. 11 (*2*) of that Act (*c*). Under sect. 12 of the Act (*d*), the L.C.C. repay to the authority appointing a M.O.H. one-half of the salary, if the regulations already mentioned have been complied with.

The duties of the M.O.H. of a sanitary authority or the port health authority are also to be prescribed by the Minister's regulations under sect. 11 of the Act, and closely resemble those dealt with in the part of this title in which the duties of a M.O.H. outside London are set out. [111]

(*g*) Replacing P.H. (London) Act, 1891, s. 106; 11 Halsbury's Statutes 1083.

(*u*) 11 Halsbury's Statutes 1425.

(*a*) Replacing P.H. (London) Act, 1891, s. 108 (*2*); 11 Halsbury's Statutes 1085, and P.H. (Officers) Act, 1921, s. 7; 10 Halsbury's Statutes 861.

(*b*) The City corp'n. act as the port health authority of London under s. 5 of P.H. (London) Act, 1936, which replaces s. 111 of P.H. (London) Act, 1891; 11 Halsbury's Statutes 1086.

(*c*) Replacing P.H. (London) Act, 1891, s. 108 (*1*); 11 Halsbury's Statutes 1084.

(*d*) Replacing para. 3 of Sched. III. to L.G.A., 1929; 10 Halsbury's Statutes 980.

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## MEDICAL OFFICER (POOR LAW)

See POOR LAW MEDICAL OFFICERS.

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## MEDICAL OFFICERS OF HEALTH, THE SOCIETY OF

This society began as the Metropolitan Association of Medical Officers of Health in 1856, and is now called the Society of Medical Officers of Health. Its principal object is "to promote the advancement of public health in every branch, not only by intercourse among the members, but by practical and theoretical study of all questions connected therewith." Originally its membership was confined to medical officers of health, but owing to the growth of public health the basis of its membership has been widened and under its present constitution medical officers dealing with hygiene in Government departments or the services, medical officers of health, assistant medical officers of health, medical officers holding specialist or clinical appointments in connection with any branch of public health, dental surgeons and veterinary surgeons are eligible for election. The membership comprises Honorary Fellows, Fellows and Associates, and the management of the society is vested in a council composed of representative members with, in addition, not more than four other eminent persons interested in the advancement of public health. The offices of the society are situated at 1 Thornhaugh Street, Russell Square, London, W.C.1.

[112]

## MEDICAL SUPERINTENDENT

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### See also titles :

HOSPITAL AUTHORITIES ;  
HOSPITAL STAFF ;  
INSTITUTIONAL RELIEF ;  
ISOLATION HOSPITALS ;

MENTAL DEFECTIVES ;  
MENTAL DISORDER AND MENTAL  
DEFICIENCY ;  
MENTAL HOSPITALS.

**Introductory.**—In its usually accepted sense the term "medical superintendent" means a registered medical practitioner in charge of an institution for the sick, and responsible both for the good conduct of the institution and the medical care of the patients. This definition is generally applicable to the medical superintendents of institutions under local authorities.

Subject to the enactments and regulations governing his appointment, a medical superintendent is the head of the institution. His actions, like those of all other local government officers, are ultimately controlled by the local authority, subject in some instances to a sanction of the M. of H. or the Board of Control, as the case may be. He is, however, usually given a free hand with regard to the administration of the hospital generally, although any considerable change in administration should be submitted by him to the controlling committee for prior approval. The nature of the administration will depend upon the character of the hospital—whether it is (1) a general hospital for men, women and children and all diseases, or (2) a special hospital as for example, for acute cases or chronic cases only, or for diseases of children or for pregnant women, or an isolation hospital, mental hospital or sanatorium. [113]

The medical superintendent is assisted in his work by a staff of whole-time resident medical officers, one of whom may be designated the deputy medical superintendent. The number of resident medical officers in any institution will depend on the total number of beds as well as the character of the cases admitted. In a general hospital for acute cases only, the medical staff will be greater in proportion to the number of beds than in a hospital which admits chronic cases only. In an isolation hospital again, the number of resident medical officers in relation to the number of beds has also to be correlated with the periodicity of epidemic diseases, and when epidemic diseases are rampant, additional resident medical officers may have to be engaged. [114]

In a hospital with 500 or 600 beds, the medical superintendent usually undertakes some clinical work in addition to his administrative duties. But in larger general hospitals the medical superintendent tends to become more and more an administrative officer. In such larger hospitals a whole-time medical officer of great clinical skill and experience is sometimes appointed as physician, surgeon, obstetrician or gynaecologist in clinical charge of the medical, surgical, obstetrical and gynaecological cases admitted to the hospital. Authority is usually given to the medical superintendent to obtain consultant advice in special cases. In the case of at least one large local authority, arrangements have been made whereby part-time specialists in all branches—medicine, surgery, obstetrics and gynaecology, orthopaedics, ophthalmology, otology, rhinology and laryngology, dermatology, radiology and anaesthesia—are employed with definite clinical responsibility for the cases allotted to them. Such an arrangement does not do away with the need for resident medical officers, but ensures the highest possible standard of clinical work within the hospital. The senior resident whole-time medical staff of general hospitals must always consist of well qualified medical practitioners, although the total number will vary according to the use made of specialist officers or consultants. In every general hospital of any size, whether the whole-time medical or part-time consultant system prevails, junior short-term appointments are usually available for recent graduates in medicine. After experience gained in junior appointments, these practitioners may proceed to senior hospital appointments, or take up private practice or some other branch of medical work. All the medical work of a hospital is carried out under the general administration of the medical superintendent, although the clinical responsibility in certain forms of administration, as already indicated, may be vested in specially appointed officers.

All members of the medical staff of a hospital are potentially research workers and in the larger hospitals there is ample material for research. Research includes clinical research as well as laboratory research, and in many instances both types of research have to be correlated in connection with inquiries into particular diseases or studies. The amount of research in any hospital will largely depend upon the quality of the medical staff as well as on its sufficiency. It is highly desirable that the whole of the medical staff should not be overburdened with routine work in order that they may have opportunities of conducting necessary investigations into the cause, prevention and treatment of disease. [115]

**General Hospitals.**—Under sect. 131 of the P.H.A., 1875 (*a*), as amended by sect. 14 of L.G.A., 1929 (*b*), county councils and the councils of boroughs and urban and rural districts may provide for the use of the inhabitants of their area hospitals for the reception of the sick. Sect. 1 of the Act of 1929 (*c*) transferred to county councils and county borough councils the hospitals previously provided and maintained by boards of guardians as poor law hospitals; see title **HOSPITAL AUTHORITIES**. A medical superintendent appointed to any of the hospitals provided under the foregoing Acts, excluding hospitals still maintained as poor law hospitals, is appointed under sects. 105—107 of L.G.A., 1933 (*d*), and holds office during the pleasure of the council, unless a stipulation for an agreed notice of the termination of the appointment has been made under sect. 121 of the Act (*e*). His duties are such as may be specified by the appointing authority. Generally he is regarded as the head of the institution, and subject to the directions of the council is responsible for the control of the staff, the care and treatment of the patients and the general good conduct of the hospital.

The county or county borough council may continue to administer a transferred hospital or institution previously maintained by a board of guardians, as a poor law hospital or institution containing hospital patients, in which case the medical superintendent is the medical superintendent of a poor law hospital and is subject to the Public Assistance Order, 1930 (*f*); see *post*, p. 54. [116]

**Mental Hospitals.**—As to the appointment of a superintendent of a mental hospital, and, where two or more mental hospitals have been provided, of a supervising medical officer for all the hospitals, see title **MENTAL HOSPITALS**, *post*, at p. 127.

The visiting committee have power to remove a medical superintendent and to fill any vacancy arising, and his salary is fixed by them (*g*). The visiting committee must make general rules for the government of a mental hospital, which require the approval of the Board of Control (*h*), and also regulations, not inconsistent with the general rules for the government of the mental hospital, setting forth

(a) 13 Halsbury's Statutes 678; replaced by P.H.A., 1936, s. 181.

(b) 10 Halsbury's Statutes 891; replaced in part by P.H.A., 1936, s. 181.

(c) *Ibid.*, 883.

(d) 26 Halsbury's Statutes 861, 862.

(e) *Ibid.*, 370.

(f) S.R. & O., 1930, No. 185; 12 Halsbury's Statutes 1053—1060.

(g) Lunacy Act, 1890, s. 276 (3), (5); 11 Halsbury's Statutes 111, 112.

(h) *Ibid.*, s. 275 (1), as amended by s. 14 of Mental Treatment Act, 1930; 23 Halsbury's Statutes 168.

the duties of the medical superintendent in common with those of other officers (i). By Parts VIII. and IX. of the Mental Treatment Rules, 1930 (k), of the Board of Control, the medical superintendent of a mental hospital is required to furnish certain certificates and reports, but his principal duties are prescribed by the visiting committee, and these include all the usual functions of a medical superintendent relating to the control of staff and the care of patients and the general good conduct of the institution; see title MENTAL HOSPITALS. [117]

**Institutions for Mental Defectives.**—These institutions are governed by the Mental Deficiency Regulations, 1935 (l), made by the M. of H. under the Mental Deficiency Acts, 1913 to 1927 (m), as well as by provisions in those Acts. Under art. 56 (1) a superintendent must be appointed by the local authority (n) for each certified institution provided by them. He must reside in, or in the immediate vicinity of, the institution and cannot be dismissed without the Board of Control's consent (*ibid.*). If the superintendent is not a medical officer, the local authority must appoint a medical officer for the institution, but the Board of Control may at any time direct that a medical practitioner shall be appointed as superintendent (art. 56 (2)). The superintendent is to be the chief officer of the institution, and subject to any directions of the committee of management, has authority to superintend and control its management, and to direct the duties of the staff (art. 56 (4)), and the superintendent may suspend a member of the staff pending a meeting of the committee of management (*ibid.*). Other necessary officers and servants are to be appointed by the local authority under art. 57.

No doubt it is intended that the duties imposed on the local authority by the regulations already mentioned shall be subject to sect. 28 (2) of the Mental Deficiency Act, 1913 (o), and shall in the first instance stand referred to the mental deficiency committee, or if the local authority think fit, be delegated to that committee. As to the committee of management, this term is defined in art. 8 as meaning the mental deficiency committee, a sub-committee of that body entrusted with the management of the institution, or as respects a joint institution, the joint committee or sub-committee entrusted with its management. [118]

**Poor Law Hospitals.**—A medical superintendent must be appointed by the county council or county borough council under art. 148 of the Public Assistance Order, 1930 (p), at every hospital, meaning every poor law establishment recognised by the Minister as a separate establishment for the reception and maintenance of the sick or persons requiring maternity treatment (art. 6). Thus the question whether a poor law institution or portion of a poor law institution, is or is not a hospital depends on its recognition by the Minister as a hospital. A medical superintendent must have been a duly qualified medical practitioner for at least five years and have held the appointment of

(i) Lunacy Act, 1890, s. 275 (3); 11 Halsbury's Statutes 111.

(k) S.R. & O., 1930, No. 1083; 23 Halsbury's Statutes 192–203.

(l) S.R. & O., 1935, No. 524.

(m) 11 Halsbury's Statutes 160–196, 200, 201.

(n) A county or county borough council, or a joint committee or joint board formed under the Act; see ss. 27, 29.

(o) 11 Halsbury's Statutes 177.

(p) S.R. & O., 1930, No. 185; 12 Halsbury's Statutes 1053–1090.

house physician or house surgeon in a public general hospital and have had experience in the administrative control of a public general hospital or poor law hospital (art. 163). His name and remuneration must be reported to the Minister on his appointment (art. 162), and he can be dismissed only with the Minister's consent (art. 157). The medical superintendent is required to reside in the part of the hospital assigned to him by the management committee or in such other place as the committee may approve (art. 175 (2)). He must also make satisfactory arrangements for the receipt, care and issue as required of drugs and medical and surgical appliances (art. 175 (3)). [119]

Under art. 175 the medical superintendent of a poor law hospital not only performs the duties assigned to a medical officer by art. 170 of the Order, but also the duties of the master of an institution under art. 168, except in so far as any of the duties already mentioned may be inapplicable to a hospital or may be assigned to the steward of a hospital by art. 177 or by the management committee. He is thus under art. 168 responsible to the management committee for the government and control of the hospital and its officers and inmates.

The medical superintendent may authorise the admission of a person to the hospital without an order of admission under certain conditions (art. 75 (1) (3)). If he refuses to admit a person to the hospital as a patient he must report the refusal to the clerk of the council who must submit the report to the House Committee (art. 75 (4)). He must observe all orders of the Minister and all lawful regulations or directions of the council affecting his office, and the other duties imposed by art. 104. Subject to the directions of the management committee, he must visit and attend the inmates regularly and at all necessary times, and where there is no assistant medical officer, name to the committee some qualified medical practitioner who will in his unavoidable absence act in his place (art. 170 (1)). [120]

**Isolation Hospitals.**—The order of the county council constituting an isolation hospital district under the Isolation Hospitals Act, 1893 (9), would usually provide for the appointment by the hospital committee of a medical superintendent and other officers at the isolation hospital, but the Act is silent as to the qualifications of the superintendent.

Where an isolation hospital has been provided by a county council or by a borough or district council under the enactments mentioned *ante*, on p. 53, the medical superintendent would be appointed under the provisions of the L.G.A., 1933, also referred to there.

The qualifications and tenure of office of a medical superintendent of an isolation hospital maintained by a joint hospital board would be governed by the provisional order constituting the board.

No qualifications or duties are laid down by orders or regulations of the M. of H. or other central department for any of the appointments already mentioned, but a medical superintendent must of course be a registered medical practitioner and will carry out all the usual duties of a medical superintendent subject to the directions of the appointing authority. He is usually appointed as the principal officer at the hospital, responsible to the hospital committee and through them to the appointing authority for the control of staff and the care and treatment of the patients and generally for the good conduct and smooth working

(9) See s. 10 (2) of the Act of 1893; 13 Halsbury's Statutes 864; replaced by P.H.A., 1930, ss. 6, 7, 8, 9, 10.

of the hospital. He reports to and receives such instructions as may be necessary from the hospital committee at their regular meetings. He is assisted in the carrying out of his duties by other medical officers, their number depending on the size of the hospital, and also by a matron and steward. [121]

**Sanatoria.**—The term "medical superintendent" as applied to the tuberculosis work of a local authority has a prescribed meaning. A medical superintendent in this regard means a medical officer in clinical charge of a residential institution for the treatment of patients suffering from tuberculosis in the early or curative stages of the disease, which contains not less than 75 beds (*r*). It will be observed that while he is in clinical charge this does not mean that his duties are solely clinical, but that they may be extended by the local authority appointing him to include the general control of the institution. Where a medical superintendent, as so defined, is appointed by the council of a county, county borough or metropolitan borough, or by a joint committee of any such councils, art. 3 of the regulations in question requires that he shall be (1) a registered medical practitioner who prior to April 1, 1930, held the appointment of tuberculosis officer or medical superintendent with the approval of the Minister; or (2) a registered medical practitioner who subsequent to qualification has had at least three years' experience in the practice of his profession, has spent in general clinical work a period of not less than eighteen months, of which not less than six months have been spent in a hospital as resident officer in charge of beds occupied by general medical or surgical cases, and (3) has received special training for a period of not less than six months in the diagnosis and treatment of tuberculosis.

Duties are not prescribed by Acts, orders or regulations for the medical superintendent of a sanatorium, but he must fulfil the usual duties of a medical superintendent, as set out generally in this article, relating to the control of the institution and the care and treatment of the patients and carry out such other directions as he may receive from the local authority. The approval of the M. of H. is not necessary to an appointment, and a superintendent may be dismissed without the consent of the Minister. [122]

**London.**—No isolation hospital districts under the Isolation Hospitals Act, 1893, exist in London. As to superintendents of mental hospitals, see title MENTAL HOSPITALS. Apart from the points referred to, the position in London is the same as that elsewhere. [123]

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(*r*) Local Government (Qualifications of Medical Officers and Health Visitors) Regulations, 1930, art. 2; S.R. & O., 1930, No. 60. Printed at p. 3624 of Lunley's Public Health, 10th ed.

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## MEDICAL TREATMENT

*See DISPENSARIES.*

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## MEETINGS

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## See also titles :

ADMISSION TO MEETINGS ;  
BILLS : PARLIAMENTARY AND PRIVATE ;  
BOROUGH COUNCILLOR ;  
CHAIRMAN ;  
COMMITTEES ;  
DISTRICT COUNCILLOR ;

JOINT BOARDS AND COMMITTEES ;  
MAYOR ;  
MINUTES ;  
PARISH COUNCILLOR ;  
PARISH MEETINGS ;  
STANDING ORDERS.

## I. GENERAL PROVISIONS

**Introductory.**—In this title, the term “local authority” has the meaning assigned to it by sect. 305 of L.G.A., 1933 (a), that is to say, it covers a county council, borough council, district council or a parish council, but not a joint board or a parish meeting.

The Act of 1933 is printed at 26 Halsbury's Statutes 295—541, and it seems unnecessary to insert in this title further references to the pages on which particular provisions appear. References to sections or schedules should be read as references to provisions of that Act, unless a contrary intention is indicated.

In this division of this title the enactments which govern all classes of local authority will be referred to, and in the later divisions enactments which relate to a particular kind of local authority (such as a county council or a borough council), and parish meetings will be dealt with. [124]

(a) 26 Halsbury's Statutes 465.



The general procedure as to meetings of local authorities is governed by sect. 75 of and the Third Schedule to the Act, and the standing orders of the particular local authority. Apart from these sources, there is the common law as to meetings, which may be modified or extended by statute or standing order, but any intention to alter the common law must be expressed in clear and unambiguous language. All questions and acts of a local authority must be done and decided by a majority of their members present and voting thereon at a meeting of the local authority (b). [125]

The proceedings of a local authority or of a committee thereof are not invalidated by any vacancy among their number or by any defect in the election or qualification of any member (c). The decision of a council is not invalidated through one of the members who has a personal interest in the matter being allowed to speak and use his influence (d), unless the council in deciding the matter are acting judicially, in which case their decision will be quashed, if an interested member takes part and votes (e).

A meeting is properly constituted when it has been properly convened by a valid notice, the proper person is in the chair and there is a quorum present. To constitute a meeting, more than one member must be present (f), and moreover the persons present must have attended with the intention to hold a meeting. In *Barron v. Potter* (g) it was held that the physical presence of a quorum does not necessarily constitute a meeting unless there was an intention to hold a meeting, either by previous notice or by arrangement. [126]

**Standing Orders.**—Meetings of local authorities are regulated generally by the L.G.A., 1933, which provides that their conduct and procedure may be controlled by standing orders which take effect subject to the provisions of that Act, and which a local authority may also vary or revoke (h).

With a circular (No. 1444) of December 31, 1934, the M. of H. issued a model series of standing orders for the use of local authorities (i), and in a preface the enactments governing the conduct of business by local authorities were set out. A variety of matters is dealt with in the standing orders, such as the dates and times for holding meetings, the order of business, motions and questions, the rescission of existing resolutions, the rules of debate, the course to be taken on misconduct or obstruction, the general method of voting and on appointments to offices, the canvassing of members, the disclosure by a candidate of his relationship to any member or officer, the admission of the public to meetings, the sealing and signature of documents, the payment of amounts and the submission of estimates. The model occupies eighteen pages, but several of the clauses are alternatives. Unless standing orders are adopted, the conduct of the business of the local authority will be left in a state of uncertainty on various points which should be covered by standing order. [127]

(b) Sched. III., Part V., 1 (1).

(c) *Ibid.*, 5.

(d) *Murray v. Epsom Local Board*, [1897] 1 Ch. 35; 33 Digest 17, 65.

(e) *R. v. Hendon R.D.C., Ex parte Chorley*, [1935] 2 K. B. 696; Digest Supp.

(f) *Sharp v. Davies* (1876), 2 Q. B. D. 26; 10 Digest 1109, 7301.

(g) [1914] 1 Ch. 895; 9 Digest 437, 2340.

(h) Sched. III., Part V., 4.

(i) Copies may be purchased for 6d. of H.M. Stationery Office, Kingsway, W.C.2.

**Chairman.**—Apart from standing orders, the general powers and duties of the chairman of a meeting are : (1) to see that the meeting is properly constituted and that all the statutory requirements are duly observed ; (2) to allow no discussion unless it has reference to matters in the agenda, or on some motion before the meeting ; (3) to decide all emergent questions which necessarily require decision at the time (*k*), and to maintain his ruling on points of procedure (*l*) ; (4) to put motions and amendments thereto in their proper order and form, and to take the sense of the meeting thereon ; (5) to act *bona fide* and in the best interests of the meeting (*m*).

The primary functions of a chairman may be stated as : (1) to preserve order ; (2) to take care that the proceedings are conducted in a proper manner ; and (3) to see that the sense of the meeting is properly ascertained with regard to any question which is properly before the meeting (*n*).

Unless there is disorder, he should not adjourn or dissolve the meeting until the business for which it has been convened has been transacted, unless he has such a power by the standing orders, or with the consent of the meeting if standing orders do not make provision for this (see *post*, p. 60). [128]

**Casting Vote.**—The person presiding at a meeting of a local authority has a second or a casting vote in the case of an equality of votes (*o*). If after the chairman has given his original vote, the number of votes for and against a motion are equal, and the chairman decides not to give a second or a casting vote in favour of the motion, the motion falls to the ground. Where the number of votes for and against are equal, and the chairman has not voted, the motion can be carried by the chairman giving his casting vote in favour of the motion. The introduction of "a" before "casting vote" in para. 1 (2) of Part V. of the Third Schedule is new and makes it clear that the person presiding may give a casting vote where he has not given an original vote, and the text also makes clear that the chairman may have an original vote ; but see sects. 4 (3) and 19 (3) (*p*).

"Equality of votes" means an equality of valid votes. The chairman may give a contingent casting vote which is to operate only in the event of there being an equality of valid votes (*q*). Although the person presiding at a meeting of a county or borough council may not be entitled to give an original vote (*e.g.* where an outgoing alderman presides at the election of a mayor where the retiring mayor is a candidate (*r*)), he may nevertheless give a casting vote (*s*). [129]

**Adjournment.**—The power of adjournment is incident to a meeting of a corporate body, and a meeting may be adjourned, though the

(*k*) SELBORNE, L.C. in *Re Indian Zoedone Co.* (1884), 26 Ch. D. 70 at p. 77 ; 9 Digest 581, 3887.

(*l*) *Henderson v. Bank of Australasia* (1890), 45 Ch. D. 330 at p. 350 ; 9 Digest 570, 3787.

(*m*) *Arnot v. United African Lands, Ltd.*, [1901] 1 Ch. 518 ; 9 Digest 571, 3795 ; *Cornwall v. Woods* (1846), 4 Notes of Cases 555 at p. 560 ; 19 Digest 268, 517.

(*n*) *National Dwellings Society v. Sykes*, [1894] 3 Ch. 159 ; 9 Digest 570, 3784.

(*o*) Sched. III., Part V., 1 (2).

(*p*) 26 Halsbury's Statutes 308, 315.

(*q*) *Bland v. Buchanan*, [1901] 2 K. B. 75 ; 33 Digest 60, 365.

(*r*) L.G.A., 1933, s. 19 (2) ; 26 Halsbury's Statutes 315.

(*s*) *Ibid.*, ss. 4 (3), 19 (3) ; *ibid.*, 308, 315.

procedure is usually regulated by standing orders. "The principle I take to be, that a quarterly meeting may be adjourned to complete unfinished business, and that in such cases no summons may be necessary; but that no fresh business which may casually arise can be transacted at this adjourned meeting, unless notice and summons have been issued" (t).

Standing orders commonly empower a chairman to adjourn a meeting at any time in the interests of order. A council (u) may adjourn a meeting to any day or hour, but the business to be transacted at the adjourned meeting should be confined to that appearing in the agenda paper but not disposed of at the original meeting unless express notice is given of the new business. When a meeting is adjourned to more than twenty-four hours ahead, provision is usually made for notice of such adjourned meeting to be sent to each member specifying the business to be transacted.

Apparently if a meeting is duly convened it cannot be postponed by a subsequent notice issued before the meeting. It can, of course, be adjourned before any business is done (v). [180]

**Motions and Resolutions.**—The terms "motion" and "resolution" are often used synonymously, but a motion is properly a proposition or proposal formally proposed, whereas a resolution is a motion which has been adopted by the meeting. Motions usually become resolutions of a local authority by vote of a simple majority (w) except where statute otherwise provides, e.g. the provision for the retirement of the whole of the members of a district council requires a majority of not less than two-thirds of the members voting on the resolution (a).

The procedure as to motions is governed by standing orders. In model Standing Order No. 5, certain kinds of motions are specified which may be moved without notice, e.g. for adjournment of the meeting, amendments to motions or the reference of a matter to a committee, and the preceding standing order requires other notices of motion to be delivered to the clerk not later than a specified number of days before the day of meeting. The clerk then inserts the notice of motion in the summons to the meeting. It is also provided that every notice of motion shall be relevant to some question over which the council have power, or which affects their area. [181]

A motion may be altered by the member moving it, if the alteration could have been moved as an amendment to the motion, and if the consent of the seconder and of the council is obtained (Standing Order No. 12). Subject to the same consents, a motion or amendment may be withdrawn by the proposer (Standing Order No. 8 (13)).

The proposer of a motion has a right of reply at the close of the debate on the motion (Standing Order No. 11).

By model Standing Order No. 13, no motion to rescind a resolution passed within the preceding six months, and no motion to the same effect as one negatived within the preceding six months, may be pro-

(t) *R. v. Grimshaw* (1847), 10 Q. B. 747 at p. 755; 33 Digest 60, 360.

(u) In *R. v. Norman* (1865), 29 J. P. Jo. 407, it was held to be a power inherent in any meeting to adjourn, and see *Shaw v. Thompson* (1876), 3 Ch. D. 233; 19 Digest 271, 551, and *Sloughton v. Reynolds* (1736), 2 Stra. 1045; 10 Digest 270, 541.

(v) *Smith v. Parings Mines*, [1906] 2 Ch. 198; 9 Digest 563, 3736.

(w) Sched. III, Part V., 1 (1); 26 Halsbury's Statutes 500.

(a) S. 35 (3).

posed unless the notice of it bears the names of the number of members specified in the standing order. When any such motion has been disposed of by the council, a similar motion must not be proposed for a further period of six months. Motions moved in pursuance of the report or recommendation of a committee are, however, exempted from this standing order. [182]

**Amendments.**—These are additions to, insertions in, or omissions from a motion of certain words and are governed by standing orders as to form, procedure and notice (*b*). They must be affirmative in form, relevant and germane to the motion which they purport to amend, and within the scope of the notice convening the meeting.

Under model Standing Order No. 5, an amendment may be moved without previous notice, but on motions of importance it is desirable that written notice of an amendment to the notice of motion should be sent to the clerk in time for inclusion in the summons of the meeting. Unless this course is taken, the amendment must be handed in writing to the chairman of the meeting and any motion or amendment must be seconded (No. 8 (1)). But in seconding a motion or amendment, a member may state that he wishes to reserve his speech until later in the debate (No. 8 (2)). An amendment must be (1) to leave out words, or (2) to leave out words and insert or add others, or (3) to insert or add words (No. 8 (5)). But the omission or the insertion of the words must not have the effect of introducing a new proposal into or of negating the motion before the council (*ibid.*). If an amendment be rejected, other amendments can be moved, and if an amendment be carried, the motion as amended takes the place of the original motion (No. 8 (6)). A further amendment cannot be moved until the council have disposed of any amendment previously moved (No. 8 (7)). [183]

**Rules of Debate.**—Certain rules are prescribed by model Standing Order No. 8. If two or more members rise, the person presiding must call on one of them to speak, and it is provided that no speech shall exceed a given number of minutes, except with the consent of the council (*c*). A member must not speak more than once on a motion or amendment, except in cases specified (No. 8 (8)). Points of order may, however, be raised, personal explanations given, and the closure moved by a member who has already spoken. A personal explanation must be restricted to explaining some material part of an earlier speech at the same meeting. The ruling of the presiding chairman on a point of order or personal explanation is not open to discussion, and when he rises during a debate any member then speaking must resume his seat and all the members must remain silent. [184]

**Disorder.**—Apart from standing orders, a chairman has an inherent power to adjourn a meeting in the interests of order (*d*), and where a chairman may, with the consent of the members present, adjourn a meeting, he is not bound to adjourn it, even though a majority of those present desire the adjournment (*e*).

(*b*) Apart from any provision in standing orders, amendments need not be seconded, *Re Horbury Bridge Coal Co.* (1870), 11 Ch. D. 109 at p. 118; 9 Digest 571, 3798.

(*c*) In some standing orders, the mover of a resolution is allowed a longer time than other members.

(*d*) *National Dwellings Society v. Sykes*, [1894] 3 Ch. 159 at p. 162; 9 Digest 570, 3784.

(*e*) *Salisbury Gold Mining Co. v. Hathorn*, [1897] A. C. 268; 9 Digest 580, 3879.

Model Standing Orders Nos. 9 and 10 allow a member, if at a meeting another member has persistently disregarded the ruling of the person presiding, or has behaved irregularly, improperly or offensively or has wilfully obstructed the business, to move that the member complained of should not be further heard, or alternatively that he should leave the meeting. Such a motion if seconded is to be put and determined without discussion. If after the motion has been carried, continued misconduct or obstruction renders impossible in the opinion of the person presiding, the due and orderly dispatch of business, he may without question put, adjourn or suspend the sitting for such period as he considers expedient. [135]

A person who has no right to be present or a disorderly member who refuses to leave the meeting after he has been properly requested to leave may be removed by force. The Local Government Board were accustomed to advise local authorities that this should be done by the local authority's staff (not by members) or, better, if practicable, by a peace officer. In *Doyle v. Falconer* (f) it was said: "If the good sense and conduct of the members prove insufficient to secure order and decency of debate, the law would sanction the use of that degree of force which might be necessary to remove the person offending from the place of meeting," and in *Barton v. Taylor* (g) Lord SELBORNE, L.C. said: "The power of suspending a member guilty of obstruction or disorderly conduct during the continuance of any current sitting is reasonably necessary for the proper exercise of the functions of any legislative assembly of this kind (N.S. Wales Assembly)." Both these cases related to colonial legislatures. It does not follow that the law is the same for local authorities, but it is believed the judgments so far quoted are a safe guide. It may be doubted whether a further power suggested in the N.S. Wales case, to suspend the offending member until submission or apology is available to local authorities. [136]

**Voting.**—The method of voting at a meeting of a county council or borough council is not prescribed by the Act of 1933, but model Standing Order No. 14 requires every question to be determined by show of hands, and allows a requisition to be made by a specified number of members that the voting on any question shall be recorded so as to show how each member who voted gave his vote. This standing order resembles the provisions in para. 6 of Part III. and para. 5 of Part IV. to the Third Schedule to the Act, as to voting at meetings of district and parish councils, and where it has been adopted, any method of voting, other than by show of hands, is not admissible at a meeting of a county or borough council.

A member present need not vote, but only those competent to take part in the proceedings may vote. In order to be counted in the vote for or against, a member must actually vote. Where a resolution is recorded as passed unanimously, every member present must be taken to have voted for the resolution even although the votes were not expressly recorded (h).

As to the disability under sect. 76 of the Act of a member from

(f) (1866), L. R. 1 P. C. 328 at p. 340; 36 Digest 288, 366.

(g) (1886), 11 App. Cas. 197 at p. 204; 36 Digest 295, note (q). The common law is examined in an article at p. 405 of the *Justice of the Peace and Local Government Review* for June 23, 1934.

(h) *Everett v. Griffiths*, [1924] 1 K. B. 641; 33 Digest 12, 28.

voting on any contract or other matter in which he has a pecuniary interest, see Vol. IV., pp. 23—25.

There is no common law right on the part of a member of a local authority to vote by proxy (*i*). All acts of a local authority and all questions coming or arising before a local authority are, save as specially provided in some other enactment, to be done and decided by a majority of the members present and voting thereon at a meeting of the local authority (*k*). [187]

**Minutes.**—Minutes of the proceedings at a meeting of a local authority are to be recorded in a special book and are to be signed at the same or the next ensuing meeting by the person presiding thereat, and any such minute purporting to be so signed is to be received in evidence without further proof (*l*). Rule 10 in Part I. of the First Schedule to the P.H.A., 1875 (*m*), also provided that copies of any orders made or resolutions passed at a meeting if purporting to be signed by the chairman, should be received as evidence. This has now been repealed without re-enactment; therefore in any legal proceedings where it is necessary to prove the contents of the minute book it will be now necessary to produce it.

The names of the members must also be recorded, and in practice are recorded in the minute book.

Model Standing Order No. 3 requires the minutes of the previous meeting of the council to be read and approved as correct, but allows the minutes to be taken as read, if a copy has been circulated to each member not later than the date of issue of the summons to attend the meeting. By No. 7 the person presiding must put the question that the minutes be signed as a true record, and the only discussion which may take place is as to their accuracy, any such question being raised by motion, notice of which is not, however, required (see No. 5).

The confirmation of the minutes relates only to the accuracy of the record. Minutes are not the only evidence of the proceedings of a meeting, and may be contradicted by other evidence (*n*). An unrecorded resolution may be proved *aliunde* (*i.e.* from another source or person) (*o*). But evidence is not admissible to explain the terms of a resolution set out in full as actually passed (*oo*).

A member of a local authority does not make himself responsible for an act done at a meeting at which he was not present merely by voting at a subsequent meeting for the confirmation of the minutes (*p*).

Until the contrary is proved, a meeting of a local authority or committee of which a minute has been duly made and signed is to be deemed to have been duly convened and held, and all the members present are to be deemed to have been duly qualified (*q*).

By sect. 288 of the Act, the minutes of proceedings of a local authority are made open to the inspection of any local government

(*i*) *Harben v. Phillips* (1883), 23 Ch. D. 14; 9 Digest 673, 4487.

(*k*) Sched. III., Part V., 1 (1). A decision may be taken on the vote of a bare majority of duly qualified members.

(*l*) Sched. III., Part V., 3 (1); 26 Halsbury's Statutes 501.

(*m*) 18 Halsbury's Statutes 706.

(*n*) *Totthill's Case* (1865), 1 Ch. App. 85; 9 Digest 282, 1745.

(*o*) *Knight's Case* (1867), 3 Ch. App. 321; 9 Digest 518, 3397, followed in *Re Fireproof Doors, Ltd.*, [1910] 2 Ch. 142; 9 Digest 518, 3398.

(*oo*) *Re Magraith*, [1934] 2 K. B. 415; Digest Supp.

(*p*) *Burton v. Benan*, [1908] 2 Ch. 240; 9 Digest 408, 3270.

(*q*) Sched. III., Part V., 3 (2).

elector for the area of the local authority on payment of a fee not exceeding 1s., and he may make a copy of them or take an extract from them. Further as to inspection, see title MINUTES. [188]

**Quorum.**—A quorum (*r*) is a fixed number of members of a local authority whose presence is necessary for the valid transaction of business. No business can be transacted at a meeting of a borough, district or parish council unless at least one-third of the whole number of members of the council are present (*s*), and no business can be transacted at a meeting of a county council unless at least one-fourth of the whole number of members of the council are present (*t*). But of a district council no larger quorum than seven is necessary, and the quorum of a parish council must not be less than three.

County or borough aldermen must of course be counted as members. The case of *Newhaven Local Board v. Newhaven School Board* (*u*) shows that in reckoning "the whole number of members," the total number of seats must be counted, including casual vacancies.

All the enactments already mentioned as to the quorum are subject to the special provision in para. 6 of Part V. of the Third Schedule to the effect that where more than one-third of the members become disqualified at the same time, then until the number of members in office is increased to not less than two-thirds of the whole number of members, the quorum shall be determined by reference to the number of members remaining qualified instead of by reference to the whole number of members. The reason for this provision is that a large proportion of the members may have become disqualified under sect. 50 (1) (d) of the Act through having been surcharged by the district auditor to an amount exceeding £500, and it allows the quorum to be calculated on the number of members remaining qualified instead of on the whole number of members. [189]

**Admission of Public and Press.**—See title in Vol. I., ADMISSION TO MEETINGS.

## II. COUNTY COUNCILS

**Days and Hours of Meetings.**—In every year, a county council must hold an annual meeting and at least three other meetings, which shall be held at regular intervals, for the transaction of general business (*x*). These meetings are to be held at such hour as the council may fix and at such place, either within or without the county, as the council may direct (*y*).

The annual meeting is held :

- (1) in a year which is the year of election, on March 16, or such other day within fourteen days after March 8 as the council may fix ; and
- (2) in any other year, on such day in the month of March, April or May as the council may fix ;

(*r*) Only those members present should be counted in a quorum who are competent to take part in the particular business before the meeting.

(*s*) Sched. III., Part II., 4 ; Part III., 4 ; Part IV., 4.

(*t*) *Ibid.*, Part I., 4 ; 26 Halsbury's Statutes, 499.

(*u*) (1885), 30 Ch. D. 350 ; 33 Digest 17, 64.

(*x*) Sched. III., Part I., 1 (1).

(*y*) *Ibid.*, 1 (2) (4).

at such hour as the council may determine, or if no hour is fixed at noon (z). If March 16 be a Sunday, Good Friday, bank holiday or day appointed for public thanksgiving or mourning, the meeting is to be held on the next following business day (sect. 295).

Meetings other than the annual meeting are to be held at such hour and day before the following March 8 as the council at the annual meeting or by standing order determine (a).

The first business at the annual meeting is the election of the chairman, and in every third year the ordinary election of county aldermen takes place immediately after the election of the chairman (b).

[140]

**Convening of Meetings.**—The chairman of the council may call a meeting of the council at any time, and if he refuses to call a meeting after a requisition for that purpose signed by five members of the council has been presented to him, or neglects to do so within seven days after such requisition has been presented to him, any five members of the council, on such refusal or the expiration of the seven days, may forthwith call a meeting (c).

Three clear days at least (d) before a meeting of the council, notice of the time and place of the meeting must be published at the offices of the council, and where the meeting is called by members of the council the notice is to be signed by those members and must specify the business to be transacted (e). A summons to attend the meeting, signed by the clerk of the council and specifying the business to be transacted, should be left at or sent by post to the usual place of residence of every member. It is not required that the summons should reach the member's hands. Want of service of the summons on any member does not affect the validity of a meeting.

The notice of a meeting of the council at which a resolution for the payment out of the county fund (other than ordinary periodical payments), or for incurring a liability exceeding £50, will be proposed, must state the amount of the sum or liability, and the purposes for which it is required (f).

Except business required to be transacted at the annual meeting (g), no business can be transacted at a meeting of the council other than that specified in the summons relating thereto (h). [141]

**Proceedings.**—The chairman of the council, if present, presides at a meeting of the council (i). Under sect. 5 (1) of the Act, the council must appoint a member to be vice-chairman, and in the absence of the chairman, the vice-chairman presides at the meeting (k). If both the chairman and the vice-chairman are absent, then an alderman must be chosen to preside, or in the absence of all the aldermen, a councillor must be chosen to preside (l).

As to the casting vote of the person presiding, and as to the quorum, see *ante*, pp. 59, 64. [142]

(z) Sched. III., Part I., 1 (2).

(a) *Ibid.*, 1 (3).

(b) *Ss.* 4 (1), 7 (1); 26 Halsbury's Statutes 308, 309.

(c) Sched. III., Part I., 2.

(d) Exclusive of day of notice and day of meeting, but s. 295 does not prevent a Sunday or holiday counting as one of the "clear days."

(e) Sched. III., Part I., 2 (3).

(f) *Ibid.*, 2 (4).

(g) *E.g.* the election of a chairman.

(h) Sched. III., Part I., 2 (5).

(i) *Ibid.*, 3 (1).

(k) *Ibid.*, 3 (2).

(l) *Ibid.*, 3 (3).

L.G.C., IX.—5



## III. BOROUGH COUNCILS

**Days and Hours of Meetings.**—In each year, the council must hold an annual meeting and at least three other meetings, to be held at regular intervals, for the transaction of general business (*m*). The annual meeting must be held on November 9, at noon, or at such other hour as the council may determine, and the other meetings must be held at such hour and on such days before November 1 following as may be decided by the council either at their annual meeting or by standing order (*n*).

By sect. 19, at the annual meeting, the first business is the election of a mayor, *i.e.* before the confirmation of the minutes of the preceding meeting. Where a sheriff has to be appointed, sect. 70 (2) of the Municipal Corporations Act, 1882 (*o*), provides that his appointment shall be made immediately after the election of the mayor. The election of aldermen in every third year takes place immediately after the election of the mayor, or, if there is a sheriff, after the appointment of the sheriff (*p*). A prior election of aldermen before that of mayor is void (*q*). After the election of the mayor, sheriff (if any) and aldermen, the meeting should proceed in the ordinary way, usually by first confirming the minutes of the preceding meeting. [143]

**Convening of Meetings.**—The mayor may call a meeting of the council at any time, but if he refuses to call a meeting after a requisition for that purpose signed by five members, or by one-fourth of the whole number of members of the council (*r*), whichever be less, has been presented to him, or neglects to do so within seven days after such requisition has been presented to him, any five members, or one-fourth of the members of the council whichever be the less, on such refusal or the expiration of seven days, may forthwith call a meeting (*s*). [144]

Three clear days at least (*t*) before a meeting of the council, notice of the time and place of the meeting must be published at the town hall, and where the meeting is called by members of the council the notice is to be signed by those members, and the notice must specify the business to be transacted. A summons to attend the meeting, signed by the town clerk, specifying the business to be transacted should be sent by post or otherwise to the usual place of residence of every member (*u*). It is not required that the summons should reach the member's hands. Want of service of the summons on any member does not affect the validity of a meeting (*v*).

Except in the case of business required to be transacted at the annual meeting, no business may be transacted at a meeting of the council other than that specified in the summons relating thereto (*a*). [145]

(*m*) Sched. III., Part II., 1 (1); 26 Halsbury's Statutes 497.

(*n*) *Ibid.*, 1 (2). If November 9 be a Sunday or a day appointed for public thanksgiving or mourning, the meeting is to be held on the next following business day; see s. 295.

(*o*) 10 Halsbury's Statutes 632.

(*p*) L.G.A., 1933, s. 22 (1).

(*q*) *R. v. McGowan*, (1840), 11 Ad. & El. 869; 20 Digest 135, 1091.

(*r*) This includes vacant seats; see *Newhaven Local Board v. Newhaven School Board* (1885), 30 Ch. D. 350; 33 Digest 17, 64.

(*s*) Sched. III., Part II., 2 (1), (2).

(*t*) Exclusive of day of notice and day of meeting, but s. 295 does not prevent a Sunday or holiday counting as one of the "clear days."

(*u*) Sched. III., Part II., 2 (3).

(*v*) *Ibid.*, 2 (4).

**Proceedings.**—The mayor, if present, presides at a meeting of the council (*b*). Under sect. 20 (1) of the Act, the mayor may appoint a deputy mayor, but the deputy mayor does not take the chair at a meeting of the council unless he is specially appointed by the meeting to preside (*c*). If the mayor is absent or the deputy mayor is not chosen to preside at a meeting of the council, any such alderman or in the absence of all the aldermen such councillor as the members of the council present choose, presides at the meeting (*d*). As to the casting vote of the person presiding, and as to the quorum, see *ante*, pp. 59, 64. [146]

#### IV. URBAN AND RURAL DISTRICT COUNCILS

**Days and Hours of Meetings.**—The annual meeting must be held on or as soon as conveniently may be after April 15 (*e*) in every year, and at least three other meetings must be held for the transaction of general business (*f*). No meeting may be held on licensed premises, except where no other suitable room is available for such meeting, either free of charge or at a reasonable cost (*g*).

The days on which ordinary meetings of the council are to be held and the hour of meeting are usually fixed by the standing orders of the council. [147]

**Convening of Meetings.**—The chairman of the council may call a meeting at any time (*h*), and five members or one-fourth of the whole number of members (*i*), whichever is the less, may requisition a meeting. If the chairman refuses to call a meeting, or does not call it within seven days after the requisition has been presented to him, any five members or one-fourth of the whole number, whichever is the less, may forthwith call a meeting (*k*).

At least three clear days (*l*) notice of the time and place of a meeting must be published at the offices of the council, and where a meeting is convened by members of the council the notice is to be signed by those members. The notice must specify the business to be transacted. A summons to attend the meeting, signed by the clerk of the council and specifying the business to be transacted thereat, should be sent by post or otherwise to the usual place of residence of every member (*m*). It is not required that a summons should reach a member's hands, and the want of service of the summons on any member does not affect the validity of a meeting (*n*). [148]

**Proceedings.**—The chairman of the district council, if he is present, presides, but if he is absent the vice-chairman, if any, if present,

(*b*) Sched. III., Part II., 3 (1); 26 Halsbury's Statutes 497.

(*c*) S. 20 (3).

(*d*) Sched. III., Part II., 3 (3).

(*e*) *I.e.* the date when newly elected members come into office, s. 35 (3).

(*f*) Sched. III., Part III., 1.

(*g*) *Ibid.*, 1 (3).

(*h*) *Ibid.*, 2 (1).

(*i*) This includes vacant seats, see *Newhaven Local Board v. Newhaven School Board* (1885), 30 Ch. D. 350; 33 Digest 17, 64.

(*k*) Sched. III., Part III., 2 (2).

(*l*) Exclusive of day of notice and day of meeting, but s. 295 does not prevent a Sunday or holiday counting as one of the "clear days."

(*m*) Sched. III., Part III., 2 (3).

presides, and if both chairman and vice-chairman are absent, the members present choose a councillor to preside (*n*).

An inspector appointed by the Minister of Health is entitled to attend any meeting of the council as and when directed by the Minister, and may take part in the proceedings but may not vote (*o*).

The voting is by show of hands and the vote given by each member need not be recorded unless a member so requires (*p*). The record, if required, must show how each member voted and thus prevents voting by ballot on any particular motion.

As to the casting vote of the person presiding, and as to the quorum, see *ante*, pp. 59, 64. [149]

#### V. PARISH COUNCILS

**Days and Hours of Meetings.**—A parish council must hold an annual meeting and at least three other meetings in every year (*g*). The annual meeting is to be held on or within fourteen days after April 15 in every year (*r*). The hour of meeting is usually fixed by a standing order of the parish council.

Meetings of the parish council are to be open to the public, unless the council otherwise direct, and no meeting may be held on licensed premises except where no other suitable room is available for such meeting, either free of charge or at a reasonable cost (*s*). [150]

**Convening of Meetings.**—The chairman of a parish council has the right of convening a meeting of the council at any time (*t*).

A requisition for a meeting, signed by two members, if refused by the chairman, or if without refusing he does not call a meeting within seven days after its presentation to him, empowers any two members (not necessarily the two requisitionists) on such refusal or the expiry of the seven days, to convene forthwith a meeting of the council (*u*).

Notice of a meeting, giving time and place, must be given at least three clear days (*x*) before the meeting, and must be affixed in some conspicuous place in the parish and where the meeting is called by members of the council such notice must be signed by those members and must specify the business to be transacted thereat (*a*). As the enactment recognises as sufficient a posting of the notice in some conspicuous place, it is unnecessary also to affix the notice on each church or chapel in the parish under sect. 287 (1) (*a*) of the Act.

A summons to attend the meeting specifying the business to be transacted, signed by the clerk of the council, should be left at or sent by post to the usual place of residence of every member of the council. It is not required that the summons should reach a member's hands, and failure to serve the summons on any member does not invalidate the meeting (*a*). [151]

(n) Sched. III., Part III., 3.

(p) *Ibid.*, 6.

(g) Sched. III., Part IV., 1 (1).

(s) *Ibid.*, 1 (4), (5).

(t) *Ibid.*, 2 (2).

(u) *I.e.* exclusive of day of notice and day of meeting, but s. 295 does not prevent a Sunday or holiday counting as one of the "clear days."

(a) Sched. III., Part IV., 2 (3). See *Longfield Parish Council v. Wright* (1918), 88 L. J. (Ch.) 110; 88 Digest 81, 154, as to transaction of business of which proper notice had not been given.

(o) *Ibid.*, 5.

(r) *Ibid.*, 1 (2).

(i) *Ibid.*, 2 (1).

**Proceedings.**—The chairman of the parish council, if he is present, presides, but if he is absent the vice-chairman, if any, if present, preside, and if both chairman and vice-chairman are absent, the members present choose a councillor to preside (b).

The voting is by show of hands, and the vote given by each member need not be recorded unless a member so requires (c). The record, if required, must show how each member voted, and thus prevents voting by ballot on a particular motion.

As to the casting vote of the person presiding, and as to the quorum, see *ante*, pp. 59, 64. For the functions of a parish council, see title PARISH COUNCIL. [152]

## VI. PARISH MEETINGS

**General.**—Parish meetings are held only for parishes within a rural district, and by sect. 47 (1) consist of an assembly of the local government electors for the parish. The parish meeting of a rural parish under a parish council or under a grouped parish council must be distinguished from a parish meeting of a rural parish not under a parish council or grouped parish council. Where there is a parish council, that council act as the ordinary medium for the transaction of parish business, and apart from the election of the parish councillors the functions of the parish meeting are merely of occasional importance. But where the population of a rural parish is less than 300 and the parish is not under a parish council, all parish affairs fall to be dealt with by the parish meeting. [153]

A parish meeting may be held under sect. 78 for a parish ward, or other part of a parish, and the persons entitled to attend the meeting and vote are then the local government electors registered in respect of qualifications in that parish ward or part of the parish.

A parish meeting is not a "local authority" within the definition in sect. 805 of the Act, and provisions of the Act, such as that in sect. 76 as to members of local authorities voting on contracts, do not extend to electors present at a parish meeting.

By para. 7 (1) of Part VI. of the Third Schedule to the Act, a parish council may make, vary and revoke standing orders for the regulation of the proceedings and business at parish meetings for the parish. Such standing orders are not often made, and the provision does not allow a grouped parish council to make standing orders of this kind.

In a rural parish not having a separate parish council, the parish meeting regulate their own proceedings and business, subject of course to the express provisions of the Act (d). [154]

**Days and Hours of Holding.**—Whether the parish is or is not under a parish council (see *supra*), an annual assembly of the parish meeting must be held on some day between March 1 and April 1 (e). If the parish has no separate parish council, at least one further meeting must be held during the year (f), unless an order for the grouping of the parish with another under a common parish council otherwise provides (g). Other parish meetings may be held on such days and at

(b) Sched. III., Part IV., 3.

(c) *Ibid.*, 5.

(d) Sched. III., Part VI., 7 (2).

(e) S. 77 (1) and Sched. III., Part VI., 1 (1).

(f) Sched. III., Part VI., 1 (2).

(g) As to grouping orders, see ss. 45, 46.

such times and places as may be fixed by the parish council; or if there is no parish council by the chairman of the parish meeting (*h*).

The proceedings at a parish meeting cannot commence earlier than 6 p.m., and must not be held in premises licensed for the sale of intoxicating liquor, unless there is no other suitable room available for such meeting either free of charge or at a reasonable cost (*i*). [155]

**Convening of Meetings.**—Parish meetings may be convened by (1) the chairman of the parish council; (2) any two parish councillors; (3) in the case of a parish not having a parish council, the chairman of the parish meeting, or any person representing the parish on the R.D.C.; or (4) any six local government electors for the parish (*h*).

Not less than seven clear days before a parish meeting (*l*), public notice is to be given of the time and place of the intended meeting and the business to be transacted, and the notice must be signed by the convener or conveners of the meeting (*m*). Not less than fourteen days' notice must be given of a meeting convened for the purpose of establishing or dissolving a parish council, or the grouping of a parish with another parish, or the adoption of any of the adoptive Acts (*n*).

A public notice of a parish meeting is to be given (1) by affixing the notice to or near the principal door of each church or chapel (*o*) in the parish; (2) by posting the notice in some conspicuous place or places in the parish; and (3) in such manner (if any) as appears to the conveners of the meeting to be desirable for the purpose of giving publicity to the notice. [156]

**Chairman of Meeting.**—Unless the parish has a separate parish council, a chairman of the parish meeting, who holds office for a year or until his successor is elected, is chosen at the annual assembly of the parish meeting in March or April (*p*), but the grouping order may otherwise provide if the parish is grouped under a common parish council, *e.g.* it might allow the chairman of the grouped parish council to act as chairman of each parish meeting comprised in the group.

Where a parish has a separate parish council, the chairman of the council presides at any parish meeting unless he is a candidate for election at the meeting (*q*). At meetings in a rural parish not having a separate parish council, the chairman of the parish meeting, if present, presides (*r*). If the chairman of the parish council or of the parish meeting is absent or unable to take the chair at a parish meeting, the meeting may appoint a person to act in his stead, who has, for the purposes of that meeting, all the powers and authority of the chairman (*s*).

(*h*) Sched. III., Part VI., 1 (2). See, however, para. 156, *infra*, as to right of other persons to convene a parish meeting.

(*i*) *Ibid.*, 1 (3), (4).

(*h*) *Ibid.*, 2 (1). See s. 305 for definition of "local government elector."

(*l*) *I.e.* excluding the day on which notice is given and the day of the meeting, but s. 295 does not prevent a Sunday or holiday counting as one of the "clear days."

(*m*) Sched. III., Part VI., 2 (2).

(*n*) *Ibid.* As to the establishment or dissolution of a parish council, see ss. 43, 44; the grouping of parishes, ss. 45, 46; and for definition of "adoptive Acts," s. 305.

(*o*) *I.e.* of the Church of England, see *Ormerod v. Chadwick* (1847), 16 M. & W. 367; 19 Digest 252, 362.

(*p*) S. 46 (8).

(*q*) Sched. III., Part VI., 3 (1).

(*r*) *Ibid.*, 3 (2).

(*s*) *Ibid.*, 3 (3). The powers and duties of a chairman may be regulated by standing orders made by the parish council under para. 7 of Part VI., if the parish

Any person presiding at a parish meeting has a second or a casting vote in the case of an equality of votes (*t*). As to the effect of a casting vote, see *ante*, p. 59.

The chairman of a parish council is entitled to attend a parish meeting for the parish whether he is or is not a local government elector (*u*) for the parish, but, if not such an elector, he can only give a casting vote at the meeting, not an original vote (*x*). This provision is carefully worded so as to exclude from its scope the chairman of a grouped parish council, and to apply only where there is an equality of votes. [157]

**Proceedings.**—A parish meeting may discuss parish affairs and pass resolutions thereon (*a*). As to the functions of a parish meeting, see title PARISH MEETINGS.

A quorum is not prescribed by the Act, but it is obvious that to constitute a meeting, at least two persons must attend.

At a parish meeting or at a poll consequent thereon each local government elector has one vote only (*b*). Any question for the decision of a parish meeting is decided by a majority of those present and voting at the meeting (*c*) and the decision of the person presiding at the meeting, as to the result of the vote, is final unless a poll be demanded (*d*).

A poll may be demanded before the conclusion of a parish meeting on any question arising thereat (1) if the person presiding consents; or (2) if the poll is demanded by not less than five, or one-third, of the local government electors present at the meeting, whichever is the less. The poll must then be taken by ballot in accordance with rules made by the Secretary of State under sect. 54 of the Act as to the election of parish councillors (*e*). [158]

Minutes of the proceedings of a parish meeting must be kept in a special book provided for that purpose (*f*). The minutes are to be signed at the same or the next ensuing meeting by the person presiding thereat, and any minute purporting to be so signed is to be received in evidence without further proof (*f*). The minute book must therefore be produced in court.

Where a minute has been so made and signed, the parish meeting is to be deemed to have been duly convened and held, and the persons present to have been duly qualified, until the contrary is proved (*g*).

By sect. 283 (1), (8) of the Act, the minutes of proceedings of a parish meeting are open to the inspection of any local government elector for

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has a separate parish council. See *ante*, p. 59, for duties and functions at common law.

(*t*) Sched. III., Part VI., 5 (3).

(*u*) "Local government elector" or "elector" means a person registered as a local government elector in the register of electors in accordance with the provisions of the Representation of the People Acts; see s. 305.

(*x*) S. 77 (2).

(*a*) Sched. III., Part VI., 4.

(*b*) *Ibid.*, 5 (1). As to polls at elections of parish councillors, see Vol. V., pp. 250–200. As to other polls, see title PARISH MEETINGS.

(*c*) *I.e.* a simple majority. But this should not be read as overruling s. 7 (2) of L.G.A., 1894; 10 Halsbury's Statutes 770, which provided that where under any of the adoptive Acts a particular majority was required, the like majority of the parish meeting should be necessary.

(*d*) Sched. III., Part VI., 5 (2). As to a second or a casting vote, see *supra*.

(*e*) *Ibid.*, 5 (4), (5).

(*f*) *Ibid.*, 6 (1).

(*g*) *Ibid.*, 6 (2).

the parish, on payment of a fee not exceeding 1s., who may also make a copy of them or take an extract. Further as to the inspection of minutes, see title MINUTES. [159]

## VII. MEETINGS OF JUSTICES OF THE PEACE

A petty sessional court may be held at any time and without notice to all the justices who commonly act for that petty sessional division. It is, however, the rule for justices to assemble regularly on a fixed day or days. A court of summary jurisdiction may be held at any time without notice, and it is the practice for one or more justices to assemble as such a court whenever circumstances require (*h*).

No meeting of justices in petty or special sessions may be held in licensed premises (*i*). Meetings of justices are usually summoned by the clerk of the justices.

The chairman of the justices of the peace has no casting vote, and as to the course to be adopted when the bench are equally divided, see p. 416 of Vol. VII. But a second vote is given by sect. 4 (7) of the Licensing (Consolidation) Act, 1910 (*k*), to the chairman of a joint committee of county and borough justices, who are the confirming authority where a borough has less than ten justices. [160]

## VIII. LONDON

**County Council.**—Meetings of the L.C.C. are governed by sect. 75 of the L.G.A., 1888 (*l*), applying with modifications certain provisions of the Municipal Corporations Act, 1882, as amended by sect. 10 of the L.C.C. (General Powers) Act, 1893 (*m*), and Part IV. of their Act of 1934 (*n*). Sect. 10 of the Act of 1893 provides that in regard to the meetings and proceedings of the county council, the provisions in the Schedule to that Act are to be substituted for the Second Schedule to the Municipal Corporations Act, 1882.

By sect. 1 (3) of the County Councils (Elections) Act, 1891 (*o*), the first quarterly meeting of a newly elected council is held on March 16 or on such other day within ten days after the ordinary date of retirement of the county councillors as the council may fix. By the amending Act of 1900 (*p*) the first quarterly meeting in any year not being a year for the election of the council may be held on such day in March, April or May as the council may determine. The council may fix the hour of the quarterly meeting. In practice the council meet weekly except for the usual recesses. The quorum is one-quarter of the whole number of the council (L.G.A., 1888, s. 75 (15) and L.C.C. (General Powers) Act, 1893, Schedule, para. 8). Meetings may be held at such place as the council may determine (Act of 1888, s. 75 (21)). The Schedule to the Act of 1893 provides for the summoning of meetings at any time by the chairman or members, notice of meetings, chairmanship of meetings, the chairman of the meeting's casting vote, minutes

(*h*) And see Halsbury's Laws (2nd ed.), Vol. XXI, 560 *et seq.*

(*i*) Licensing (Consolidation) Act, 1910, s. 83; 9 Halsbury's Statutes 1082. As to meetings of quarter sessions, see Halsbury's Laws (2nd ed.), Vol. XXI, 667 *et seq.*

(*k*) 9 Halsbury's Statutes 988.

(*l*) 10 Halsbury's Statutes 746.

(*m*) 11 Halsbury's Statutes 1114.

(*n*) 27 Halsbury's Statutes 411.

(*o*) 7 Halsbury's Statutes 541.

(*p*) *Ibid.*, 545.

and other matters. Sect. 29 of the L.C.C. (General Powers) Act, 1934 (*g*), empowers the council to make (subject to the Act of 1893) standing orders respecting the proceedings at their meetings, delegation to committees, the place of meeting, quorum and proceedings of committees, and allows the person presiding at a committee meeting to give a second or a casting vote. [161]

**Metropolitan Borough Councils.**—By sect. 3 (8) of the London Government Act, 1899 (*r*), the ordinary day of election of the mayor and aldermen is November 9, or, if that day is a Sunday, the following day, and thus the metropolitan borough councils must meet for the purpose of these elections. The ordinary meetings of the borough council may be held on any day excepting Sunday, and any business which by statute or custom should be done on a certain day may be done at a meeting convened for the purpose and held within seven days before or after that day (Metropolis Management Amendment Act, 1862, sect. 37 (*e*), applied by London Government Act, 1899, sect. 2 (5)). The mayor if present must preside (Municipal Corporations Act, 1882, Sched. II., r. 9 (*t*), applied by the Act of 1899, sect. 2 (4) and L.G.A., 1888, sect. 75). In his absence, the meeting may elect a chairman who has a second or casting vote (Metropolis Management Act, 1855, sect. 80 (*u*), applied by sect. 2 (5) of the Act of 1899). As to the appointment of a deputy mayor, see sect. 62 of the L.C.C. (General Powers) Act, 1929 (*a*). One-third of the whole number of the borough council make a quorum (London Government Act, 1899, sect. 2 (6)). The borough council may meet at any time as they may direct (L.G.A., 1894, sect. 81 (*b*), and sect. 2 (5) of the Act of 1899). [162]

A meeting is convened by notice, signed by the town clerk and sent to members, of the place and hour of holding the same and the special purposes thereof, three days before the day appointed, and by affixing a copy on or near the door of the building where the meeting is to be held (Metropolis Management Amendment Act, 1856, sect. 9 (*c*), as applied by sect. 2 (5) of the Act of 1899). In the case of certain special business a longer notice is required, *e.g.* a transfer of drainage powers to the L.C.C., fourteen days (P.H. (London) Act, 1936, sect. 16 (*d*); promotion of and opposition to Bills in Parliament, ten days (Borough Funds Act, 1872, sect. 4) (*e*). Questions are decided by a majority of those present and voting, and the borough council may act notwithstanding any vacancies (Act of 1855, sect. 28 (*f*), as applied by the Act of 1899, and L.C.C. (General Powers) Act, 1928, sect. 31) (*g*). Special majorities are required in certain cases, *e.g.* in those already referred to as requiring a special notice of meeting.

Sect. 202 of the Metropolis Management Act, 1855, empowers a borough council to make bye-laws for regulating proceedings at its meetings. These bye-laws became subject to confirmation of the Minister of Health by sect. 39 of the L.C.C. (General Powers) Act, 1934 (*h*), and sect. 30 empowers a borough council to make standing orders respecting proceedings at meetings, delegation to committees and place of meeting, quorum and proceedings of committees, and pro-

(*g*) 27 Halsbury's Statutes 417.

(*s*) *Ibid.*, 973.

(*u*) 11 Halsbury's Statutes 890.

(*b*) 10 Halsbury's Statutes 798.

(*d*) 25 Geo. 6 & 1 Edw. 8, c. 50.

(*t*) 11 Halsbury's Statutes 890.

(*h*) 27 Halsbury's Statutes 418.

(*r*) 11 Halsbury's Statutes 1227.

(*f*) 10 Halsbury's Statutes 660.

(*a*) *Ibid.*, 1425.

(*c*) 11 Halsbury's Statutes 960.

(*e*) 10 Halsbury's Statutes 560.

(*g*) *Ibid.*, 1412.



vides that the person presiding at a meeting of a committee shall be entitled to give a second or a casting vote, and the Minister of Health advises borough councils to use this more flexible power and repeal their bye-laws.

Resolutions of a borough council cannot be rescinded at a subsequent meeting unless such meeting is specially convened for the purpose; if the number of members at such subsequent meeting is not greater by one-fifth than the number present at the original meeting, a two-thirds majority of the members then present is necessary, otherwise an ordinary majority suffices (Act of 1855, sect. 57 (i), as applied and in part repealed by the London Government Act, 1899). These provisions, however, do not apply to the revocation or variation of standing orders under sect. 30 of the Act of 1934 (k). [163]

(i) 11 Halsbury's Statutes 891.

(k) 27 Halsbury's Statutes 418.

## MEMORIALS, WAR AND OTHER

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### See also titles :

ANCIENT MONUMENTS AND BUILDINGS ;	GIFTS OF LAND AND OTHER PROPERTY ;
BURIALS AND BURIAL GROUNDS ;	OPEN SPACES ;
CEMETERIES ;	ROAD AMENITIES ;
CHARITIES ;	TOWN PLANNING SCHEMES.
DRINKING FOUNTAINS AND TROUGHS ;	

**Preliminary Note.**—Local authorities have no general power to erect monuments or memorials, but they have powers under the P.H.A. Amendment Act, 1890, and the War Memorials (Local Authorities' Powers) Act, 1923, to maintain such structures.

For the law relating to monuments of historical or architectural interest reference should be made to Vol. I., title ANCIENT MONUMENTS AND BUILDINGS, and for that relating to monuments in burial grounds and cemeteries to Vol. II., titles BURIALS AND BURIAL GROUNDS and CEMETERIES. [164]

**Maintenance under the P.H.A. Amendment Act, 1890.**—By sect. 42 of the P.H.A. Amendment Act, 1890 (a), the council of any borough or urban district, if they have adopted Part III. of that Act, may authorise the erection of statues or monuments in any street (b) or

(a) 13 Halsbury's Statutes 840.

(b) As to the meaning of "street," see s. 11 (3) (*ibid.*, 827), and P.H.A., 1875, s. 4; 13 Halsbury's Statutes 625. The application of this section is not confined to highways repairable by the inhabitants at large.

public place within their borough or district, and may maintain the same and any statue or monument erected within the district before the present provisions came into force in the district, and may remove any statue or monument, the erection of which has been authorised by them (c). The section was extended to all rural districts by the Rural District Councils (Urban Powers) Order, 1931 (d), but the consent of the county council is required to the exercise by such a council of the powers of the section (e). [165]

Whenever it is proposed to erect a statue or monument in a county road vested in the county council, that council's consent must be obtained in addition to the district authority's authorisation (f).

This section is particularly useful for the purpose of enabling local authorities to authorise the erection of war memorials on highways, as it seems clear that apart from statutory authority the erection of a statue or monument in a highway, thereby obstructing the general right of passage, would be an indictable nuisance (g). [166]

**Maintenance under the War Memorials (Local Authorities' Powers) Act, 1923.**—Many war memorials erected by private subscription, often not erected in streets and public places, were in danger of being neglected owing to the absence of an endowment fund or other provision for their repair and maintenance. In these circumstances it became almost inevitable that responsibility would ultimately fall on the local authorities, and to provide for the maintenance of some of these memorials, many of which had been handed over to local authorities, and to remove doubts as to the powers of local authorities, the War Memorials (Local Authorities' Powers) Act, 1923, was passed. By this Act the local authority (h) is empowered to incur reasonable expenditure in maintaining, repairing and protecting any war memorials within its district which may be vested in the authority. The Act does not authorise a local authority to provide a memorial, but if a memorial is provided by voluntary subscription, the memorial may be vested in the local authority under the section. Both the memorial building and the land upon which it stands must be, it is submitted, vested in the local authority, and unless and until this has been done, the local authority cannot exercise any powers under the Act; the word "vest," however, is a word of wide import, and it may be that vesting by lease would be sufficient for the purpose (i).

The Act does not apply to a war memorial provided or maintained by a local authority in the exercise of any other statutory powers (k).

(c) A contract by a local authority to maintain a drinking fountain inscribed with defamatory words and likely to provoke a breach of the peace is against public policy and would not be enforced by the courts. See *Woodward v. Battersea Corporation* (1911), 104 L. T. 51; 28 Digest 442, 636.

(d) S.R. & O., 1931, No. 580; 24 Halsbury's Statutes 262.

(e) *Ibid.*, s. 3 (b), Sched., Part II.

(f) L.G.A., 1929, Part III.; 10 Halsbury's Statutes 908.

(g) See, however, *Squire v. Campbell* (1896), 1 My. & Cr. 459; 26 Digest 413, 1336. In spite of the refusal of an injunction in this case it is submitted that the law is as stated in the text.

(h) Ss. 1—4; 10 Halsbury's Statutes 875, 876. "Local authority" means the council of a county, county borough, metropolitan or other borough, or of an urban district or parish, and the parish meeting of a rural parish with no parish council (*ibid.*, s. 4). It will be observed that rural district councils are not included.

(i) Cf. the terms of s. 5 of the Ground Game Act, 1880; 8 Halsbury's Statutes 1008.

(k) S. 3.

The expenditure of a parish council or parish meeting must be limited to an amount not exceeding one and one-third of a penny rate in any financial year, with such percentage increase as the Minister of Health may order in special circumstances (*l*), and be subject to the consent of the county council (*m*); and that of any other local authority to an amount from time to time approved by the Minister of Health (*n*). [167]

**Memorials Provided or Maintained by a Local Authority under General Statutory Powers.**—Although a local authority has no general statutory power to provide or erect a memorial as such, a local authority under its statutory powers may have acquired by purchase or accepted as a gift (*o*) real or personal property for a local public purpose, with the object of maintaining it to commemorate some person or event, for instance, a park (*p*) or open space (*q*), art gallery, library or museum (*r*), public clock (*s*) or seat (*t*).

The provisions of the War Memorials (Local Authorities' Powers) Act, 1923, do not apply to these, but the general statutory provisions governing them empower the local authority to maintain them for the purposes for which they were provided, and if the property has been acquired by way of gift, conditions are usually imposed by the donors which will ensure the maintenance of the memorial in good condition, and the perpetual association with the memorial of a suitable name, having regard to the event or person to be commemorated. [168]

**Design and External Appearance.**—A public or quasi-public body having under consideration the provision or the approval of the provision of a memorial, whether in the form of a monument, building, bridge, park or open space, is well advised to consult the Royal Fine Art Commission (*u*) who are prepared, free of charge, to submit criticism or advice on any project involving questions of public amenity or artistic importance, such as the design or lay-out of new buildings, bridges and open spaces, or the design or siting of memorials and commemorative monuments (*a*). The Royal Institute of British Architects and the Council for the Preservation of Rural England have

(*l*) S. 75, L.G.A., 1929; 10 Halsbury's Statutes 932. See also s. 193, L.G.A., 1933; 26 Halsbury's Statutes 411.

(*m*) The M. of H. has expressed the opinion that it is unnecessary for a county council to approve every item of expenditure proposed to be incurred by a parish council. It is within their powers to approve the annual expenditure of a reasonable sum not exceeding the statutory maximum. The reasonableness of any particular item is a question for the district auditor.

(*n*) War Memorials (Local Authorities' Powers) Act, 1923, s. 2.

(*o*) See s. 268, L.G.A., 1933; 26 Halsbury's Statutes 449. Also Vol. VI., title GIFTS OF LAND AND OTHER PROPERTY, and Vol. III., title CHARITIES.

(*p*) S. 164, P.H.A., 1875; 13 Halsbury's Statutes 603. See title PUBLIC PARKS.

(*q*) S. 10, Open Spaces Act, 1906; 12 Halsbury's Statutes 387. See title OPEN SPACES.

(*r*) Libraries Acts, 1892-1919; 13 Halsbury's Statutes 850, 966, and see titles ART GALLERIES, LIBRARIES, MUSEUMS.

(*s*) S. 165, P.H.A., 1875; 13 Halsbury's Statutes 604; s. 46, P.H.A. Amendment Act, 1890; 13 Halsbury's Statutes 841; and see title PUBLIC CLOCKS.

(*t*) S. 14, P.H.A., 1925; 13 Halsbury's Statutes 1119; s. 10, Open Spaces Act, 1906; 12 Halsbury's Statutes 387, and title SEATS.

(*u*) Appointed by Royal Warrant of May 29, 1924.

(*a*) Further particulars may be obtained from the Commission at 6, Burlington Gardens, W.1. See also pamphlets published by The Civic Arts Association, especially one by Mr. A. Clutton Brock, on War Memorials, containing simple recommendations on design, and one by Mr. Eric Maclagan on Inscriptions.

appointed voluntary panels of architects up and down the country prepared to advise on matters of this kind. [169]

**Liability of Local Authorities.**—The liability of the local authority for nuisance or negligence in regard to the use or maintenance of monuments, whether war memorials or not, under its control under the statutory provisions mentioned, is the same as for any other works in its possession or control (*b*). (See titles ACCIDENTS, NEGLIGENCE, NUISANCES.) [170]

**Preservation of Memorials.**—In areas where a resolution to prepare or adopt a town planning scheme has been passed, the local authority may make orders, subject to the approval of the Minister of Health, for the prevention of the demolition of buildings of special architectural or historic interest (except ecclesiastical buildings used for ecclesiastical purposes and buildings within the Ancient Monuments Acts). These powers supplement those of the Ancient Monuments Act of 1913 (see title ANCIENT MONUMENTS), and the Minister is required to consult the Commissioner of Works before approving an Order (*c*). [171]

**Destroying or Damaging Memorials.**—Every person who unlawfully and maliciously destroys or damages any statue, monument or other memorial to the dead in any place of divine worship or in any building belonging to the King or to any local authority, university, etc., or in any street, square, churchyard, burial ground, public ground, or any statue or monument exposed to public view, or any ornament, railing or fence surrounding such statue or monument, is guilty of a misdemeanor and is liable to imprisonment with or without hard labour for six months. Nothing in this provision is to affect the right to the recovery by action of damages for the injury so committed (*d*). [172]

**London.**—The Monuments (Metropolis) Act, 1878, provides for the preservation and maintenance by the Metropolitan Board of Works (now the County Council) of Cleopatra's Needle on the Victoria Embankment of the Thames.

The London Open Spaces Act, 1893, s. 19, provides for the preservation and maintenance by the county council of the York Water Gate in the Embankment Gardens.

The L.C.C. (General Powers) Act, 1898 (*e*), gives powers to the county council to purchase by agreement or maintain buildings and places of historical or architectural interest or works of art, or to contribute towards the cost thereof and to erect and maintain or contribute towards the provision, erection and maintenance of works of art in London.

The War Memorials (Local Authorities' Powers) Act, 1923 (*f*), and the Ancient Monuments Acts apply in London.

(*b*) As to accidents due to stones falling from a monument, see *McLoughlin v. Warrington Corporation* (1910), 75 J. P. 57, C. A.; 36 Digest 51, 318.

(*c*) S. 17, Town and Country Planning Act, 1932; 25 Halsbury's Statutes 490.

(*d*) Malicious Damage Act, 1861, s. 39; 4 Halsbury's Statutes 573. As to a monument which was maliciously tarred, see *Farnham v. Cavan County Council*, [1913] K. B. D. L.; 47 Ir. L. T. 98.

(*e*) S. 60; 11 Halsbury's Statutes 1224.

(*f*) 10 Halsbury's Statutes 875.

As to the restoration of ancient buildings to their former condition after destruction, see London Building Act, 1930 (g).

In the case of Acts authorising excavation works, such as the construction of underground railways in London, provision is usually made for objects of antiquarian interest to be at the disposal of the City or county council. For a typical clause, see London Passenger Transport Act, 1933, s. 85 (h). [173]

(g) S. 213; 23 Halsbury's Statutes 817.

(h) 27 Halsbury's Statutes 619.

## MENTAL DEFECTIVES

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See also titles :

BLIND, DEAF, DEFECTIVE AND EPILEPTIC CHILDREN ;	MENTAL DISORDER AND MENTAL DEFICIENCY ;
BOARD OF CONTROL ;	PERSONS OF UNSOUND MIND.

**Introductory.**—The powers and duties of the local authority in relation to the mentally defective are in the main contained in the Mental Deficiency Acts, 1913 to 1927 (a), and in Part V. of the Education Act, 1921 (b), although mental defectives may also be dealt with under the Lunacy and Mental Treatment Acts, 1890 to 1980, the Poor Law Act, 1930 (c), or the Children and Young Persons Act, 1933 (d). The present title deals with mental defectives other than those under the care of the local education authority, as to whom see title BLIND, DEAF, DEFECTIVE AND EPILEPTIC CHILDREN.

The Government departments concerned with mental defectives are the Board of Control and the M. of H, see title BOARD OF CONTROL.

(a) Mental Deficiency Act, 1913; Mental Deficiency (Amendment) Act, 1925; Mental Deficiency Act, 1927; 11 Halsbury's Statutes 160—201.

(b) 7 Halsbury's Statutes 159.

(c) 12 Halsbury's Statutes 968.

(d) 26 Halsbury's Statutes 168.

The judicial authority for the purposes of the Mental Deficiency Acts is any judge of county courts, police or stipendiary magistrate, or specially appointed justice who is a judicial authority for the purposes of the Lunacy and Mental Treatment Acts, 1890-1930 (e). [174]

Mental defectives are defined in sect. 1 of the Act of 1927 (f). They are classified into four groups—idiots, imbeciles, feeble-minded persons and moral defectives. The fact that a person is a defective and of a particular class must be based on medical certification, see *post*, p. 95.

It is illegal for anyone to undertake the care of a defective elsewhere than in an institution, a certified house or an approved home, without giving notice to the local mental deficiency authority and to the Board of Control within forty-eight hours of his reception (g). Furthermore it is illegal, elsewhere than in one of the places already mentioned, for anyone to undertake the care and control of more than one defective without the consent of the Board (g). [175]

**The Local Authority.**—The local authority for the purposes of the Mental Deficiency Acts, 1913 to 1927 (styled hereinafter “the deficiency authority”), are the county council or county borough council. But under sect. 29 of the Act of 1913 (h), two or more local authorities may decide to join forces, a joint committee or joint board then being formed by an order of the M. of H. Every deficiency authority must constitute a committee for the care of the mentally defective under sect. 28 of the Act to whom all matters relating to the exercise of powers under the Acts must stand referred, except the power of raising a rate or borrowing money, and powers may be delegated to the committee. [176]

**Duties of Deficiency Authority.**—By sect. 30 of the Act of 1913 (i), the deficiency authority are required, subject to the Act and to regulations made by the M. of H. :

- (i.) To ascertain what persons within their area are defectives subject to be dealt with under the Act, otherwise than at the sole instance of a parent or guardian.
- (ii.) To provide suitable supervision for such persons, or if such supervision affords insufficient protection, to take steps for securing that they shall be dealt with by being sent to institutions or placed under guardianship.
- (iii.) To provide suitable and sufficient accommodation for such persons when sent to certified institutions by orders under the Act, and for their maintenance therein, and for the conveyance of such persons to and from such institutions.
- (iv.) To provide suitable training or occupation for defectives who are under supervision or guardianship or have been sent to certified institutions.
- (v.) To make provision for the guardianship of such persons when placed under guardianship by orders under the Act.
- (vi.) If they think fit, to maintain in an institution or approved home or to contribute towards the expenses of maintenance therein or the expenses of guardianship, of defectives for whom they are responsible.
- (vii.) If they think fit, to provide for the burial of persons dying in an institution or when placed under guardianship.
- (viii.) To appoint or employ sufficient officers and other persons to assist them in the performance of their duties.
- (ix.) To make to the Board annual reports and such other reports as the Board may require.

[177]

(e) See, further, s. 19 of the Act of 1913 ; 11 Halsbury's Statutes 172, where their powers are also defined.

(f) Printed as s. 1 of the Act of 1913 at 11 Halsbury's Statutes 160.

(g) Act of 1913, s. 51 ; 11 Halsbury's Statutes 189.

(h) 11 Halsbury's Statutes 177.

(i) Printed as amended by the Act of 1927 at 11 Halsbury's Statutes 178.

These provisions are amplified by arts. 9 to 12 of the Mental Deficiency Regulations, 1935 (*k*), which require the authority in performing their duty under para. (i.) above to have regard to the nature and degree of the mental and other defects and what control and care exist or are needed, and to the general circumstances of the defective and his parents. Duties under paras. (i.), (ii.) and (iv.) above are to be performed by specially trained officers, members or officers of local societies or other persons approved by the authority, subject to the control of the Board of Control. A proper and suitable conveyance must be provided under para. (iii.) above, and at least one attendant provided, who must be a woman if a female defective is removed. The contents of the annual reports are prescribed by art. 12. [178]

Art. 112 also requires a defective, who is an inmate of a mental hospital or workhouse, to be dealt with by the deficiency authority, if the Board of Control certify that this is expedient.

If the Board of Control report to the M. of H. that a deficiency authority have made default in the performance of any of their duties under the Act, the Minister may, after holding a local inquiry in any case where he deems it desirable to do so, and on being satisfied that such default has taken place, by order require the authority to do such acts and things for remedying the default as he may direct and any such order may be enforced by *mandamus* (*l*). [179]

**Mental Defectives to be Dealt with.**—A defective may be dealt with under sects. 3, 4 of the Mental Deficiency Act, 1913, by being sent to or placed in an institution for defectives or placed under guardianship :

(A) at the instance of his parent or guardian, if he is an idiot or imbecile, or at the instance of his parent if, though not an idiot or imbecile, he is under the age of twenty-one (sect. 3); or

(B) if in addition to being a defective he falls within one of the categories specified below (*m*). [180]

(1) If he is found neglected, abandoned or without visible means of support, or cruelly treated, or if a representation has been made to the deficiency authority by his parent or guardian that he is in need of care or training which cannot be provided in his home. A defective may be deemed to be neglected (*n*) if the person or persons who have a duty to care for him do not fulfil this duty, or not having themselves the means, they do not take steps to apply for relief under the Poor Law Act, 1930, or for aid to the deficiency authority. Neglect of a child or young person is defined in sect. 1 (2) of the Children and Young Persons Act, 1933 (*o*), and for the purposes of that section the persons liable to maintain a relative are defined in sect. 14 of the Poor Law Act, 1930 (*p*). Under sect. 14 of the Mental Deficiency Act, 1913 (*q*), the putative father of an illegitimate child is liable to contribute to his maintenance up to the age of twenty-one, and also at the discretion of the judicial authority any person other than the putative father

(*k*) S.R. & O., 1935, No. 524.

(*l*) Act of 1913, s. 32; 11 Halsbury's Statutes 180.

(*m*) Act of 1913, s. 2, printed as amended by the Act of 1927 at 11 Halsbury's Statutes 161.

(*n*) See Mental Deficiency Practice, p. 255, by Shrubbsall and Williams, 1932, University of London Press, Ltd.

(*o*) 26 Halsbury's Statutes 172.

(*p*) 12 Halsbury's Statutes 976.

(*q*) 11 Halsbury's Statutes 170.

who is cohabiting with the mother. Besides the conditions alluded to, lack of protection from moral danger or exposure to physical or moral danger have been regarded as proof of neglect. Relevant circumstances would also be the drunken or criminal habits of the parents, or in the case of a girl, that the father had been convicted of a criminal offence against any of his daughters, or that the defective frequents the company of any reputed prostitute (other than her mother), or is living under circumstances calculated to encourage her seduction or prostitution. [181]

A child is abandoned if those who are legally bound to care for him fail to do so. This applies even when someone who is under no such liability takes care of the child, when those liable refuse, so that no actual suffering is incurred.

Visible means of support are such means as can be detected by reasonable inquiry. A person is not without visible means of support even though he has no possessions, so long as he is in part properly maintained by others (r).

For the various kinds of cruelty and forms of exposure to moral or physical danger, reference may be made to Part I. of the Children and Young Persons Act, 1933 (s). [182]

(2) If the defective is found guilty of a criminal offence, or ordered or found liable to be ordered to be sent to an approved school (t). Here the court under sect. 8 of the Act may either (i.) postpone the passing of sentence or making an order for committal to an approved school and direct that a petition shall be presented to a judicial authority, or (ii.) in lieu of passing sentence or making an order for committal make a similar order to that which a judicial authority might make on the presentation of a petition under the Act and may if necessary call for further medical or other evidence. [183]

(3) If he is undergoing imprisonment (except imprisonment under civil process), or penal servitude, or is undergoing detention in a place of detention by order of a court, or in an approved school, or in an inebriate reformatory, or if he is detained in a criminal lunatic asylum. In these instances, the order for the transfer of the defective to an institution for defectives must by sect. 9 of the Act be made by order of the Home Secretary, who may alternatively order the defective to be placed under proper guardianship. An order for transfer to an institution can only be made if its managers are willing to receive the defective. [184]

(4) If he is an habitual drunkard within the meaning of the Inebriates Acts, 1879 to 1900. An habitual drunkard within these Acts is "a person who, not being amenable to any jurisdiction in lunacy, is notwithstanding, by reason of habitual intemperate drinking of intoxicating liquor, at times dangerous to himself or herself or to others, or incapable of managing himself or herself or his or her own affairs" (u). [185]

(5) If a notice has been given with regard to him by the local education authority under sect. 2 (2) of the Act of 1913. See title **BLIND, DEAF, DEFECTIVE AND EPILEPTIC CHILDREN**. [186]

(6) If a female mental defective is in receipt of poor relief at the

(r) *R. v. Radcliffe (Judge)*, [1915] 3 K. B. 418; 33 Digest 272, 1897.

(s) 26 Halsbury's Statutes 172.

(t) Act of 1913, ss. 2 (1) (b), 4; 11 Halsbury's Statutes 161, 163.

(u) Habitual Drunkards Act, 1879, s. 3; 9 Halsbury's Statutes 945.



time of giving birth to an illegitimate child or when pregnant of such child. If the condition as to the receipt of poor relief at the time mentioned is satisfied, it would seem that poor relief need not be continuing when the order is made. [187]

**Ascertainment of Mental Defectives.**—Under sect. 30 of the Act of 1913, it is the duty of the deficiency authority to ascertain what persons within their area are subject to be dealt with under the Act, otherwise than on the representation of a parent or guardian under sect. 2 (1) (a) of the Act. In general, persons liable to be dealt with by the deficiency authority are such as have been notified by the local education authority, those who are neglected or delinquent or who have got into trouble in other ways, and those in whose case the parents or guardians have applied to the deficiency authority to provide care or training. It will be seen, *ante*, p. 80, that art. 10 of the Regulations of 1935 allow the deficiency authority some latitude in the selection of the persons by whom the work of ascertainment is to be performed, but specially trained officers and members or officers of local societies for assisting or supervising defectives are indicated in the regulation as the most desirable agency to be employed. In some areas the work of ascertainment is assigned to special medical officers assisted by a staff of inquiry officers, who may again be assisted by a local voluntary mental welfare committee. In a few areas a whole-time medical officer is appointed for the purpose. In most areas the duty is assigned to the M.O.H. (who is usually also the school medical officer) or to some other medical officer or officers of the local authority, often those who deal with the mentally defective children in the schools. In some areas the duty is performed by a lay officer who also acts as the executive officer of the deficiency authority. This officer either himself or through his assistants investigates cases primarily with a view to determining whether, if found defective, they could be regarded as subjects to be dealt with. He asks for a medical report on such cases in his discretion. The efficiency of ascertainment depends on the liaison established between the deficiency authority and other authorities, institutions, mental welfare associations and other societies in the area, the most important being the local education authority. It is now the duty of the deficiency authority to ascertain mental defectives who are provided for by the poor law authority (a), and under certain conditions the deficiency authority can ascertain defectives who are or who might be dealt with under the Lunacy and Mental Treatment Acts, 1890 to 1930. [188]

The inquiry officer usually takes down the information relating to the defective on a form which should be so drawn up as to deal with the special points which the authority must consider under art. 9 of the regulations of 1935 (b), and should contain details as to home conditions, parentage, causes of conditions, personal history, etc. of the defective. The needful data having been collected it is necessary to marshal the facts in a report to the committee. When a report is properly drafted the certifying or executive officer can see at a glance if adequate data have been obtained to lay before a judicial authority, or before a court if necessary. When a defective removes from the area of a deficiency authority, a copy of the ascertained particulars

(a) L.G.A., 1929, s. 14 (4); 10 Halsbury's Statutes 892.

(b) See p. 80, *ante*.

should be forwarded to the authority for the area to which he has removed. [189]

**Presentation of a Petition.**—An order of a judicial authority under the Acts, which is the usual method of placing a defective under control, may be obtained upon a private application by petition (*c*). No person may present a petition unless he is at least twenty-one years of age and has, within twenty-eight days before the presentation of the petition, seen the alleged defective (*d*). The Board of Control emphasise the need for great care, when a petition is to be presented as regards a defective for which the deficiency authority are responsible, to ensure that the most suitable institution or a suitable guardian may be selected (*e*). A petition may be presented by any relative of the alleged defective, or by any officer of the authority authorised in that behalf (*e*). It may be presented by a friend of the alleged defective, but in that case it must contain a statement of the reasons why the petition is not presented by a relative, and of the connection of the petitioner with the alleged defective and the circumstances under which he presents the petition (*f*). Where the Board of Control are satisfied that such a petition ought to be presented concerning any person, and that the authority have refused or neglected to cause a petition to be presented, they may direct an inspector or other officer to present a petition and events pursue their usual course (*g*). By sect. 5 (2) of the Act, every petition must be accompanied by two medical certificates (*h*), one of which must be signed by a medical practitioner approved for the purpose by the authority or the Board, or a certificate (*i*) that a medical examination is impracticable. The petition must also be accompanied by a statutory declaration (*k*) made by the petitioner and by at least one other person (who may be one of the persons who gave a medical certificate). The statutory declaration must state :

(i.) that the person to whom the petition relates is a defective within the meaning of the Acts, and the class of defectives to which he is alleged to belong ; and

(ii.) that the person is subject to be dealt with under the Acts, and the circumstances which render him so subject ; and

(iii.) whether or not a petition under the Acts, or a petition under the Lunacy and Mental Treatment Acts, 1890 to 1930, has previously been presented concerning the person, and, if such a petition has been presented, the date thereof and the result of the proceedings thereon ; and

(iv.) if the petition is accompanied by a certificate that a medical examination is impracticable, the circumstances which render it impracticable. [190]

These latter particulars, with other information, are embodied in a statutory declaration (*k*) which accompanies the petition. The statutory declaration must be signed by the two declarants in the presence of a

(c) Act of 1913, s. 5 ; 11 Halsbury's Statutes 163.

(d) Mental Deficiency Regulations, 1935, art. 13.

(e) Circular No. 808, June, 1935.

(f) Act of 1913, s. 5 (3) ; 11 Halsbury's Statutes 164.

(g) *Ibid.*, s. 5 (4).

(h) See Mental Deficiency Regulations, 1935, form P4.

(i) *Ibid.*, form P6.

(k) *Ibid.*, form P7.

justice of the peace, or a commissioner for oaths. The Board advise (*m*) that special attention be given to the following points in connection with the preparations of petitions. The reason why the alleged defective is "subject to be dealt with" as cited in the petition should correspond and conform strictly to the statutory definitions. Although certain inaccuracies or imperfections admit of amendment (*n*) the statutory declaration cannot be amended. When the father of a defective can be found and is not abroad so as to allow his consent to be dispensed with under sect. 4 of the Act of 1927 (*o*), his consent must be obtained or be found to have been unreasonably withheld, unless the custody of the alleged defective has been legally transferred to some other person, such as the mother. If the father is dead, the consent of the mother should be obtained or be found to have been unreasonably withheld (*p*). [191]

If the parent whose consent is legally necessary is detained under the authority of an order under the Lunacy and Mental Treatment Acts, 1890 to 1930, or under the Mental Deficiency Acts, 1913 to 1927, or is undergoing imprisonment, an effort should be made to obtain his consent. If by reason of the mental condition of the person in question he is incapable of giving consent, a statement to this effect should be cited in the order, but in any event the facts should be made known to the judicial authority to whom the petition is presented.

If the petition relates to an alleged defective who is detained under the provisions of the Lunacy and Mental Treatment Acts, 1890 to 1930, care should be taken first to obtain from the Board a certificate excepting the case from the provisions of sect. 30, proviso (iii.) of the Act (*q*). In the absence of such a certificate, the deficiency authority have no function and no valid order under the Mental Deficiency Acts can be made.

If the alleged defective is a child between seven and sixteen years of age, he must be notified to the deficiency authority by the local education authority under sect. 2 (2) of the Act of 1913 (*r*) before a petition for an order under the Acts is presented. Failure to obtain such a notification will invalidate the order. [192]

An order following a petition may not be made in any case where a certificate or the statutory declaration accompanying the petition is signed by any of the following persons:

(i.) The managers of the institution or the owner of the certified house, as the case may be, to which it is proposed to send the defective, or the person proposed to be appointed guardian.

(ii.) Any person interested in payments on account of the defective's maintenance.

(iii.) The superintendent or any medical officer of the institution or certified house to which it is proposed to send the defective.

(iv.) The husband or wife, father or father-in-law, mother or mother-in-law, son or son-in-law, daughter or daughter-in-law, brother or

(*m*) Circular No. 808, June, 1935.

(*n*) Under Mental Deficiency Regulations, 1935, art. 20.

(*o*) Printed as part of s. 6 (3) (a) of Act of 1913 at 11 Halsbury's Statutes 165.

(*p*) See *R. v. Radcliffe (Judge)*, *ex parte Oxfordshire C.C.*, [1915] 3 K. B. 418; 38 Digest 272, 1897.

(*q*) See p. 80, *ante*.

(*r*) Printed as amended by s. 2 of the Act of 1927 at 11 Halsbury's Statutes 102.

brother-in-law, sister or sister-in-law, partner, or assistant of any of the foregoing persons (*s*).

Neither of the persons signing a medical certificate can be the petitioner or similarly connected as in para. (iv.) above with the petitioner, or with the other person signing, and where the person who joins in a statutory declaration did not sign one of the medical certificates, he or she must not be connected as already indicated with the petitioner or a person who signed one of the medical certificates (*s*). [193]

**Procedure on Hearing of Petition.**—Upon the presentation of a petition and the relevant documents the judicial authority (*t*) must either visit the alleged defective or summon him to appear (*u*). The proceedings may, if the judicial authority thinks fit, and must, if the alleged defective so desires, be conducted in private, and in that case no one except the petitioner, the alleged defective, his parents or guardian and any two persons appointed for the purpose by the alleged defective, or by his parents or guardian, and the persons signing the medical certificates and the statutory declaration accompanying the petition shall, without leave of the judicial authority, be allowed to be present (sect. 6 (2)). No proceedings on a petition may be conducted in a police court or room normally used for the hearing of criminal charges (*a*). If the judicial authority is satisfied that the alleged defective is a defective and subject to be dealt with under the Acts, he may, if he thinks it desirable to do so in the interests of such person, make an order (*b*) that he be sent to an institution (*c*), or appoint a suitable person to be his guardian (sect. 6 (3)). An officer of the deficiency authority or a person already in charge of a defective or person certified under the Lunacy and Mental Treatment Acts can only be recommended as guardian with the Board of Control's consent (*d*). [194]

Where the petition is not presented by the parent or guardian, the order may not be made without the consent in writing of such person, unless it appears that such consent is unreasonably withheld, or that the parent or guardian cannot be found, or is abroad (*e*). So long as the alleged defective is found defective, a doubt as to which class of defective he is within need not delay the making of the order (*ibid.*). If the petition is dismissed, the judicial authority must deliver to the petitioner a statement in writing of his reasons for dismissing the petition and the Board of Control must also be informed (*f*). The judicial authority may, in place of dismissing the petition, adjourn the case under sect. 6 (4) for not more than fourteen days for further evidence or information or medical examination. In no case can an order be made where a medical examination has not been made. [195]

**Guardianship.**—Sect. 6 (3) of the Act of 1913 merely requires that a person appointed as guardian of a defective shall be a suitable

(*s*) Mental Deficiency Regulations, 1935, art. 18.

(*t*) As to who is a judicial authority, see *ante*, p. 79. See s. 19, 1913 Act; 11 Halsbury's Statutes 172.

(*u*) Act of 1913, s. 6 (1); 11 Halsbury's Statutes 164.

(*a*) Mental Deficiency Regulations, 1935, art. 21.

(*b*) *Ibid.*, form PS.

(*c*) As to religious persuasion, see Act of 1913, s. 17; 11 Halsbury's Statutes 172.

(*d*) Mental Deficiency Regulations, 1935, art. 14.

(*e*) Act of 1913, s. 6 (3). Printed as amended by the Act of 1927, s. 4 at 11 Halsbury's Statutes 164.

(*f*) Mental Deficiency Regulations, 1935, art. 15.

person (g). The guardian of a mental defective has such powers as would be exercisable if he were the father of the defective and the defective were under the age of fourteen (h).

The following conditions are imposed by Part X. of the regulations of 1935. The guardian may not inflict any corporal punishment nor apply any mechanical means of bodily restraint, unless the restraint is necessary for the purpose of medical treatment, or to prevent the patient from injuring himself or others. He must provide, according to the means available, for the education, training, occupation and recreation of the defective and must ensure that in these respects everything practicable is done for the improvement of the patient's mental and physical condition. Except where a defective has been placed under the guardianship of an officer of the deficiency authority or in such other cases as the Board of Control may permit, the defective must reside with the guardian. Before the guardian changes his residence and removes the defective with him to any new residence, seven days' notice must be given to the Board of Control and other persons. Subject to a licence from the deficiency authority and the petitioner he may take or send the defective, under proper control, to any place specified in the licence, or he may grant leave of absence for a period not exceeding seven days.

The guardian must within seven days after the reception of a defective into his guardianship send the Board of Control notice of the reception and a copy of the order and other documents. The deficiency authority in the case of an aided patient, and in any other case the guardian, must make satisfactory arrangements for the provision of suitable medical attendance for the defective. The Board of Control do not favour the provision of medical attendance in such cases through the medium of the relieving officer but consider that it should be provided under the Mental Deficiency Acts (i). A medical journal must be kept. [196]

Part X. of the regulations of 1935 also requires the guardian within twenty-four hours after the transfer, discharge, escape, or recapture of a defective to give written notice of it to certain authorities and persons. He must also give written notice to the Board of Control, within seven days after a patient has attained the age of twenty-one years, of the date on which he attained that age, and he must also give such notice of the date on which an order for the detention of a patient will expire, not less than one month before its expiration, and must carry out any directions which he receives from the Board with a view to the consideration of the case by the visitors and the Board.

If the defective dies the guardian must within two days of the death send notice of it on Form R7 with a statement of particulars signed by the medical attendant, to certain authorities and persons.

If the guardian wishes to resign his appointment he must give previous notice in writing of his intention to the Board and to other authorities and persons, and immediate notice must be given if the defective is or becomes unsuitable for guardianship. [197]

Every dwelling in which there is a defective under guardianship may at any time, by day or night, be visited by any one or more of the Commissioners or Inspectors of the Board of Control, and such visits

(g) But see, *supra*, the restriction imposed by the regulations of 1935 as to the recommendation of an officer of the deficiency authority, etc.

(h) Act of 1913, s. 10 (2); 11 Halsbury's Statutes 167.

(i) Circular No. 808, June, 1935.

must, unless there is reason to the contrary, be made without previous notice (*k*). The guardian must lay before the visiting Commissioners or Inspectors all books which he is required to keep, all documents relating to the defective and all unforwarded letters written by and all undelivered letters written to the defective (*l*). The deficiency authority responsible for the maintenance of a defective under guardianship must cause him to be visited at intervals of not less than three months and the person visiting must enter and sign in the visitors' book a minute of the condition of the dwelling and of the patient (*m*). Where a patient is resident outside the area of the authority arrangements may be made for the necessary visiting to be done by the authority within whose area the defective is residing (*n*). As to the visitation of a defective under guardianship by the visitors of institutions for defectives, when the patient attains twenty-one years of age or on the expiration of the order, see *post*, p. 93. [193]

The guardian must forward unopened all letters written by the defective and addressed to the Board of Control, the deficiency authority, the person who placed him under guardianship, and other specified persons, and may also at his discretion forward to its address any other letter written by the patient (*n*). A defective must be allowed to write letters at reasonable intervals, but, with the foregoing exceptions, every letter to or from a defective may be read by his guardian, and if the contents are objectionable or if the guardian considers it undesirable that intercourse should be maintained between the defective and the addressee or person from whom it is received it must not be forwarded or delivered, but must be retained for twelve months and produced at any time during that period to any commissioner, inspector or visitor (*o*). No defective may be permitted to sign any legal document without the knowledge of the guardian (*o*). [199]

By sect. 18 of the Act of 1913, the nearest adult relative or the guardian of a defective in an institution or under guardianship under the Act is entitled to visit him generally, but subject to such conditions as may be prescribed by regulations, except where, owing to the character and antecedents of the proposed visitor, the Board of Control consider that such a visit would be contrary to the interests of the defective. Under art. 80 of the regulations of 1935, the guardian may restrict the frequency of approved visits but the interval between two visits by the nearest adult relative or guardian may not be fixed at more than one month, and the defective may not be visited in connection with business transactions without the special consent of the guardian. If there is a reasonable ground for suspecting that any person visiting a patient is exercising a bad influence on him, his right to visit may be suspended by the Board of Control on the application of the guardian (*p*). The Board may at any time grant permission for the admission of any person to visit the defective, with or without restriction as to the presence of an attendant, and if the guardian prevents or obstructs the admission of such a visitor he is liable to a fine of £20 (*q*).

The deficiency authority, on becoming aware that a defective, for whose maintenance they are responsible, is unsuitable for guardianship,

(*k*) Mental Deficiency Regulations, 1935, art. 83.

(*l*) *Ibid.*, art. 84.

(*n*) *Ibid.*, art. 87.

(*p*) *Ibid.*, art. 80.

(*m*) *Ibid.*, art. 86.

(*o*) *Ibid.*, art. 88.

(*q*) *Ibid.*, art. 90.

or that the guardian is unfit for the office of guardian or has died or resigned or abandoned his office, must take all necessary steps for the care and protection of the defective (*r*). There should be no delay in taking the steps prescribed by sect. 7 (1) and (2) of the Act of 1913 to vary the original order. A new sub-sect. 2 (a) which was added to sect. 7 by the Mental Deficiency (Amendment) Act, 1925 (*s*), provides that an order that a defective should be sent to an institution may be varied, so that the defective may be placed under guardianship. [200]

The use of guardianship by the deficiency authorities, unlike supervision, entails certification and the obtaining of a judicial order. It has the advantage that it enables the authority to pay for the maintenance of a defective, a power which they do not possess for cases under supervision. Cases under guardianship fall into the following general divisions (*t*) :

(1) Those who are placed under the guardianship of their own parents or of a near relative with whom they have been living. The reason for such guardianship is generally an economic one and in these cases guardianship approximates to outdoor relief ;

(2) Defectives boarded out under the guardianship of someone other than a near relative in order that they may receive the same type of care and attention which they would receive at home.

(3) Defectives who are partially or even wholly self-supporting, but are under the guardianship of their employer, or go to work from their guardian's home.

The Board of Control consider (*u*) guardianship as chiefly useful in cases where lifelong care and protection are necessary, and where the defective has shown himself to be sufficiently stabilised and socially adaptable to enable him to live in the community if adequate control is provided. They advise (*a*) that the use of guardianship should be restricted to the following types of cases :

(i.) Tractable, easily managed medium-grade adult defectives who will never become self-supporting or capable of leading an independent life and who need continuous care.

(ii.) Certain imbecile children who have good homes and whose parents are capable of and have time for training them in decent habits, obedience and simple occupations. [201]

Guardianship allows the deficiency authority to make the parents a weekly allowance. This is a great advantage and may obviate the need for a mother having to go out to work and so allow her sufficient time to look after an imbecile child. But moral defectives, difficult feeble-minded persons, sexual perverts and those with marked erotic tendencies, those who have committed arson or crimes of violence, and incorrigible thieves are unsuitable for guardianship. If after training in an institution, these types improve sufficiently to be tried out in the world, they should be sent out on licence, a form of community care which enables quick recall to the institution if necessary. Idiots, low grade imbeciles, paralysed cases and severe epileptics are unsuited for guardianship, since they need far more attention as a rule than a working-woman can give to them.

(*r*) Mental Deficiency Regulations, 1935, arts. 97, 98

(*s*) S. 7 (2) (a) is printed at 11 Halsbury's Statutes 166.

(*t*) See Report of the Mental Deficiency Committee, 1929, Part III., p. 17.

(*u*) See Annual Report of Board of Control for 1931, Part I., p. 67.

(*a*) Annual Report of Board of Control for 1930, Part I., p. 69.

It is not easy for a deficiency authority to find suitable persons who will undertake to act as guardians. The Board of Control suggest (b) that the officers of the authority should carefully explain to prospective guardians what their duties will be and give them friendly assistance in every way, including furnishing them with the necessary forms and assisting them to fill them in when necessary. [202]

**Supervision of Mental Defectives.**—Under sect. 30 of the Act of 1918 as amended by the Act of 1927 (c), it is the duty of the deficiency authority to provide suitable supervision for all mental defectives who are subject to be dealt with under the Acts otherwise than at the instance of a parent or guardian (d), and to provide suitable training or occupation for those who are under supervision or guardianship, unless excused by the Board of Control, for adequate reasons, as respects an individual under supervision. Art. 10 of the Regulations of 1935 require deficiency authorities to perform these duties by means of officers specially trained for the purpose or by means of members or officers of such local societies for assisting or supervising defectives as are approved by the authority or such other persons as are approved by them, but in both instances subject to any conditions prescribed by the Board of Control.

It has been the practice of deficiency authorities to perform these duties (e) either through specially appointed supervision officers or through health visitors, school nurses, or, in many areas, through local mental welfare associations (to whom they make grants for salaries of officers, travelling and other expenses), or by a combination of the above methods. The employment by the authority of their own special officers appointed for the purpose has obvious advantages; but it is practically impossible in a rural or scattered area for one officer to supervise mental defectives satisfactorily without the assistance of local visitors. Where this has been realised, the deficiency authorities have, in many areas, recognised a mental welfare association and the supervision has been carried out through the friendly offices of the association's visitors. The employment of health visitors rather than of one officer only is more satisfactory, provided that the visitors are specially trained and that the authority appoint a sufficient additional number of visitors to cope with the work and do not rest satisfied with placing this additional duty on their existing staff. In most cases, the authority make those officers, who are responsible for ascertainment, responsible also for carrying out themselves, and through their staff, the duties of supervision. [203]

As regards the number of visits paid (f) and the number of reports submitted, a quarterly visit or even a half-yearly visit may be adequate in cases known to be well cared for, particularly when the defective's friends and relatives are known to be willing to co-operate and to welcome the visitor; in other cases where conditions are unsatisfactory or where the defective is very uncontrolled, monthly or even weekly visits may be indicated. The deficiency authority appoint an officer, generally their M.O.H., to examine the reports received from the visitors, and to advise them on defectives who should be sent to an institution

(b) Circular No. 308, June, 1935.

(c) Printed as amended at 11 Halsbury's Statutes 178.

(d) See ante, p. 79.

(e) Report of the Mental Deficiency Committee, 1929, Part III., p. 14.

(f) *Ibid.*, p. 15.



or dealt with in some other way. The visitors should be most useful in advising parents on possible methods of home training, especially in regard to lower grade defectives. With the higher grade cases there will also be the question of shielding them from moral risks and helping them to obtain suitable occupation or employment. The fact that a mental defective has been placed under supervision does not confer any powers to enter his home without permission, although the obstruction of a visitor is an offence under sect. 54 of the Act of 1913. The deficiency authority have no power to give assistance other than suitable training or occupation to a supervised mental defective, however much assistance may be needed in order to keep him well and happy and protected at home.

As regards training and occupation for mental defectives under supervision, the authority may provide this directly, but more usually act through the agency of a mental welfare society.

*Occupation Centres* are attended by lower grade defectives who have been notified by the local education authority (g). Vocational training is not embarked upon, and the centres aim only at fitting the child for the strictly limited environment of his own home, where he may lead a life of happiness for himself, and sometimes of usefulness to others, but in any case a life in which the defective ceases to be an intolerable burden to others and has his own place in the family circle. The occupation centre is distinct from the special school, and no "educable" defectives should attend it. Like any school, it inculcates principles of simple personal hygiene, tidiness, obedience and self-control. Simple handwork, useful domestic work, shoe-cleaning, dusting, laying tables, and scrubbing are all parts of the centre training and all render the defectives useful at home. The number attending does not usually exceed thirty or forty. The premises consist of one or two rooms and are often lent by the local education authority or some social organization. The supervisor is not generally a trained teacher, but is a woman with a knowledge of how to deal with children and ability to teach simple handwork, music and physical exercises. As a rule, she will have had some training by the Central Association for Mental Welfare in their special training centre or in an institution, or at one of the short courses organised by that Association. [204]

*Industrial Centres* have been established in a few areas, and deal with supervised defectives over the age of sixteen years. Here simple occupations are provided for the less efficient, and efforts are made to train the more efficient in useful work and to produce articles which have a commercial value.

The Board of Control have directed (h) that a special report should be made to the deficiency authority immediately the physical and mental state of any defective or the conditions and surroundings in which he is living or the means available for his care, control or training become such that, in the opinion of the supervising officer, the supervision affords insufficient protection. [205]

**Mental Defectives dealt with at instance of Parent or Guardian.**—Sect. 3 (1) of the Act of 1913 allows a defective to be placed in an institution for defectives or under guardianship, at the instance of the parent or guardian in the case of an idiot or imbecile, or at the instance of the parent, if, although not an idiot or imbecile, he is under the age of

(g) Report of the Mental Deficiency Committee, 1920, Part II., p. 67.

(h) Circular No. 808, June, 1935.

twenty-one. Certificates in the prescribed form (*i*), signed by two duly qualified medical practitioners, must be available. One of the medical practitioners must be a doctor approved for the purpose by the deficiency authority or the Board of Control. Where the defective is not an idiot or imbecile, a certificate (*k*) must also be signed under sect. 3 (1) of the Act by a judicial authority. The signatories must be satisfied that the person to whom the certificate relates is a defective and of a particular class indicated. The certificates must be accompanied by statements, signed by the parent or guardian, giving the prescribed particulars (*l*). [206]

**Institutional Care.**—Apart from State institutions, managed directly by the Board of Control, and poor law institutions, mental defectives in institutional care are found in certified institutions, certified houses and approved homes (*m*). Such care is the closest form of control. A deficiency authority may provide their own institutions or contract with others for the reception of cases (*n*). Institutions are either certified or approved by the Board of Control (*o*) and the grant, renewal, revocation and surrender of certificates or of approvals are regulated in much detail in Part IV. of the Regulations of 1935. It is of great importance that the managers or owners of institutions and homes should not fail to secure the renewal of any certificate or approval at the proper time. The management of institutions is likewise regulated in great detail by Parts V. to VII. of the regulations, but in the case of approved homes the Board attain the same object by attaching express conditions as to management, keeping of records and other matters, when issuing their approval. All certified institutions and houses and approved homes are subject to regular inspection by the Board of Control and prescribed records must by art. 38 be kept so that the well-being of the inmates is safeguarded.

The regular visitation of institutions by members of the committee of management is an essential duty, and it is important that persons appointed to such a committee should be interested in the work of the institution and able and willing to devote time and attention to the welfare of the patients (*p*). In the case of female defectives hostels are often provided as an adjunct to the main institution. These afford training in domestic service and are a useful link with the outside world.

Lists of institutions are published in the Annual Reports of the Board of Control (*q*). [207]

**Absence from an Institution.**—Under Part XIII. of the Regulations of 1935, the superintendent of an institution or certified house may under certain conditions grant to a defective detained therein a licence to be absent (*r*). He must normally reside with the person named in the licence, and the licence may be revoked at any time by the superintendent or the Board of Control. Informal leave of absence without

(i) Mental Deficiency Regulations, 1935, art. 110 and form P5.

(k) *Ibid.*, form P9.

(l) *Ibid.*, art. 110 and forms P3, P10.

(m) Defined in Act of 1913, s. 71; 11 Halsbury's Statutes 195.

(n) Act of 1913, s. 38; 11 Halsbury's Statutes 182.

(o) *Ibid.*, ss. 36 and 37.

(p) See Mental Deficiency Regulations, 1935.

(q) For a further account of institutional care, see Report of Mental Deficiency Committee, 1929, Part III., pp. 18—26.

(r) See Mental Deficiency Regulations, 1935, form L.

a licensee may also be granted for a period not exceeding seven days (*s*). The licensing of defectives is a useful means of restoring them to ordinary life and with this in view conditions and stipulations may be attached to the licence. Two types of defectives are usually sent out on licence. The high grade cases go out on licence to work, such as in domestic service. A lower grade of defective may also be licensed, who cannot work. They have learned all that is possible in an institution and are willing to lead a monotonous quiet life with a foster-mother in a cottage (*t*). [208]

**Escape of Defective from Control.**—The superintendent of an institution or certified house must immediately on the escape of a defective send notice to the Board of Control and to various persons concerned (*u*). A defective who escapes from an institution may be apprehended without a warrant by a constable or by the managers of the institution or their authorised officers and be brought back (*a*). For this purpose and while so engaged the latter persons have all the powers, protections and privileges of a constable (*b*). A private person may be authorised, but has not the status of a constable for this purpose. There is no time-limit of fourteen days for recapture, as with a person of unsound mind. The recapture of a defective must be reported, just as in the case of escape (*c*). To secrete a defective or to assist him to escape or to break any conditions of his guardianship or licence is an offence (*d*). The position after escape from guardianship is not free from doubt, but it is submitted that the statutory power of control (*e*) which the guardian has over the defective would entitle him to fetch back the defective and even to use reasonable force for this purpose. [209]

**Death of Defective.**—The superintendent of an institution or certified house must within two days of the death of a defective send, on the appropriate form and with a statement of particulars, notice of the death to the coroner, the Board of Control, the registrar of deaths and to other persons (*f*). A copy of any letter to the coroner supplementing the notice must also be sent to the Board. The superintendent must make the appropriate entries in the registers and patient's record (*g*), and special mention must be made of any mechanical restraint applied to the defective within seven days before death (*h*). The guardian of a defective has similar duties, but it is advisable for the officers of the authority on receiving notice of a death to make instant inquiry, as the guardian may have overlooked some of the essential points, particularly the notice to the coroner. [210]

**Residence of a defective.**—The place where a defective resides is an important fact to determine, since the deficiency authority within whose area that place is, are responsible for the defective's main-

(*s*) Mental Deficiency Regulations, 1935, art. 101.

(*t*) See Report of Mental Deficiency Committee, 1920, Part III., p. 27.

(*u*) Mental Deficiency Regulations, 1935, art. 44 and form R5.

(*a*) Act of 1913, s. 42; 11 Halsbury's Statutes 185.

(*b*) *Ibid.*, s. 62; 11 Halsbury's Statutes 192.

(*c*) Mental Deficiency Regulations, 1935, art. 44 and form R6.

(*d*) Act of 1913, s. 53; 11 Halsbury's Statutes 190.

(*e*) *Ibid.*, s. 10 (2).

(*f*) Mental Deficiency Regulations, 1935, art. 43, and form R7.

(*g*) *Ibid.*, arts. 40 (5), 41.

(*h*) *Ibid.*, art. 43 (4).

tenance (i). For this reason they are entitled to be heard, before the judicial authority makes any order. The place of residence is prescribed in detail in sect. 44 of the Act as amended by sect. 9 of the Act of 1927, and it has been held that "residence" means residence in the physical sense, *i.e.* where the defective eats, drinks and sleeps (j). In the case of doubt as to the residence of the defective, the poor law settlement will under sect. 44 (4) determine the issue. Where evidence was given that during certain periods a defective was residing in London and there was no evidence that she resided elsewhere, the case was not one of doubt, and the residence was presumed to be in London (k). Residence in an institution for defectives, not being that in which the defective was an inmate when the order of the judicial authority was made, is not to be excluded in deciding the place of residence (l).

A deficiency authority, who are aggrieved by a decision as to the place of residence of a defective, may, under sect. 44 (8), apply to a petty sessional court for the transfer of the liability to another council. The Lord Chancellor has made certain rules of procedure under the sub-section (ll). [211]

**Visitors.**—The visitors of institutions for defectives are those persons appointed under the Lunacy and Mental Treatment Acts, 1890 to 1930, to act as visitors of licensed houses, increased if necessary by additional visitors (m). Visitors of licensed houses are not appointed under sect. 177 of the Lunacy Act, 1890 (n), for the places in or about London described in the Third Schedule to the Act (o), and sect. 40 (2) of the Act of 1918 therefore provides that where no such visitors are appointed, a sufficient number of visitors of institutions for defectives shall be appointed, possessing the like qualifications as visitors of licensed houses, with the addition of one or more women.

It is the duty of the visitors to arrange for the consideration or reconsideration of the case of a defective who is detained in an institution or certified house or under guardianship at the expiration of an order or at the date at which a defective will attain the age of twenty-one years (p). For this purpose they are informed by the superintendent or guardian concerned (q). In the case of a defective who attains the age of twenty-one years, the visitors visit him or summon him to attend before them within three months after that time and they inquire into his mental condition and the means of care and supervision which would be available if he were discharged and into all the circumstances of the case (r). Before making any decision they must consider a report of the responsible deficiency authority, which report it is the authority's duty to supply, as to the circumstances

(i) Act of 1913, s. 43; 11 Halsbury's Statutes 185.

(j) *Berkshire County Council v. Reading Borough Council*, [1921] 2 K. B. 787; 33 Digest 273, 1902.

(k) *Kent County Council v. L.C.C.* (1915), 84 L. J. (K. B.) 1781; 33 Digest 272, 1901.

(l) *Worcestershire County Council v. Warwickshire County Council*, [1934] 2 K. B. 288; Digest Supp.

(ll) Summary Jurisdiction (Mental Deficiency Act) Rules, 1933; S.R. & O., 1933, No. 1091.

(m) Act of 1913, s. 40; 11 Halsbury's Statutes 183.

(n) 11 Halsbury's Statutes 79.

(o) *Ibid.*, 143.

(p) Act of 1913, s. 11; 11 Halsbury's Statutes 168.

(q) Mental Deficiency Regulations, 1935, art. 103.

(r) Act of 1913, s. 11 (2), (3); 11 Halsbury's Statutes 168.

of the home of the patient and all matters relating to his previous history, present circumstances and present mental condition (s). If it appears to them that further detention in an institution or under guardianship is no longer required in the interests of the defective, they must order him to be discharged, but if they do not order his discharge, the defective or his parent or guardian may, within fourteen days of receiving their decision, appeal to the Board of Control (t). [212]

In the case of other defectives whose period of detention is about to expire the visitors must make a special report (u) to the Board of Control, not more than two months before the date when the order expires. It states that the visitors have examined the defective as to his mental condition and the means of care and supervision which would be available if he were discharged and states whether, in the opinion of the visitors, the defective is still a proper person to be detained in his own interest in an institution or under guardianship.

When a defective is absent on leave at the date when the order will expire or when he attains the age of twenty-one years he may be recalled for the purpose of the consideration of his case, or arrangements may be made for that purpose by the visitors for the county or borough within which he is residing (a). The visitors must, whenever practicable, before reconsidering the case of a defective on his attaining the age of twenty-one years, give not less than fourteen days' notice of their intention to the responsible authority and to the persons who are responsible for the defective, and they must consider the representations of the authority or persons (b). They must communicate their decision on the case to the Board, and also to the superintendent or guardian, who must thereupon give notice of the decision to the persons responsible for the defective, and in the event of the visitors deciding not to order the defective's discharge, the notices to the defective and his parent or guardian must be accompanied by an intimation that an appeal may be made to the Board within fourteen days of the receipt of the notice (c). The visitors must concur with the superintendent of a certified house in the grant to a defective detained therein of a licence to be absent from the house (d). [213]

Apart from the visits paid by the visitors in the performance of their duties under sects. 11 and 12 (2) of the Act of 1913, they have various duties in connection with certified houses. Every certified house in respect of which the Board of Control so direct, must be visited six times a year, of which visits not less than four shall be paid by at least two of the visitors, of whom one shall be a medical practitioner, and the visits may be paid at any time, by day or night (e). The duties of a visitor at a certified house are set out in detail in art. 65 (3) of the regulations.

A visitor may at any visit enter in the patient's book observations as to the state of mind or body of any patient, and any other observations that he may desire to make (f). At each visit at a certified house, the visitor must be supplied by the superintendent with :

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(s) Mental Deficiency Regulations, 1935, art. 103 (2).

(t) Act of 1913, s. 11 (3).

(u) Mental Deficiency Regulations, 1935, form D1.

(a) *Ibid.*, art. 105.

(b) *Ibid.*, art. 107.

(c) *Ibid.*, art. 65.

(b) *Ibid.*, art. 106.

(d) *Ibid.*, art. 100.

(f) *Ibid.*, art. 67.

- (i.) A list of all the patients on the books of the house (distinguishing males from females);
  - (ii.) the various books required by the regulations;
  - (iii.) the certificate in force for the house;
  - (iv.) such other orders, certificates, documents and papers relating to any of the patients at any time received into the house as the visitor may require, and such other information as he may require (g).
- [214]

**Emergency Action.**—Sect. 15 of the Act of 1913 (*h*) recognises the need of dealing with a supposed mental defective by taking him to a place of safety temporarily, before action is taken for complete ascertainment or to provide for his permanent disposal. A "place of safety" is defined in sect. 71 as meaning any workhouse or police station, any institution, any place of detention, and any hospital, surgery, or other suitable place, the occupier of which is willing to receive temporarily the person in question. To authorise such a removal under sect. 15, the defective must be neglected, abandoned, or without visible means of support, or cruelly treated, and he can only be removed by an officer authorised by the deficiency authority or by a police constable. The detention in the place of safety may only be for so long as is necessary to ascertain his condition and if necessary to present a petition. If the removal of the defective is opposed it may be necessary to utilise sect. 15 (2) of the Act under which a warrant may be obtained from a justice authorising a constable named in it, accompanied by a medical officer of the deficiency authority or other duly qualified medical practitioner named in the warrant to enter, if need be by force, and to search for a supposed defective, and if it is found that he is neglected or cruelly treated and is apparently defective, he may be removed to a place of safety. If the supposed defective is not on the premises mentioned in the warrant, a further warrant is of course needed before other premises can be entered by force. Notice of reception into a place of safety should be given within forty-eight hours to the Board of Control and to the deficiency authority (*i*) by the person responsible for his care. [215]

**Medical Certification.**—A medical certificate or report is necessary where action is taken under sect. 3, 5, 9 or 11 of the Act of 1913 (*k*). Medical certificates should be obtained from medical practitioners who possess special experience in dealing with mentally deficient persons, but in all cases where the alleged defective has been under the regular care of a medical practitioner, an endeavour should be made to obtain from him one of the certificates which must accompany a petition (*l*). When a defective is dealt with at the instance of a parent or guardian under sect. 3 of the Act, that section requires certificates in the prescribed form (*m*) to be obtained, signed by two duly qualified medical practitioners, one of whom must be a medical practitioner approved for the purpose by the deficiency authority or the Board of Control. When an alleged defective is dealt with by a judicial authority under sect. 5 of the Act, the petition must be accompanied by two

(g) Mental Deficiency Regulations 1935, art. 68.

(h) 11 Halsbury's Statutes 170.

(i) Act of 1913, s. 51 (2) and Mental Deficiency Regulations, 1935, form N.

(k) 11 Halsbury's Statutes 162, 163 167, 168.

(l) Board of Control, circular No. 908, June, 1935.

(m) Mental Deficiency Regulations, 1935, form P5.

medical certificates (*n*), one of which must be signed by a medical practitioner approved for the purpose by the deficiency authority or the Board, unless a certificate (*o*) is produced to the effect that a medical examination is impracticable. Every medical certificate accompanying a petition must state the facts upon which the signatory has formed his opinion that the alleged defective is a defective within the statutory definition, distinguishing facts observed by himself from facts communicated by others, and an order may not be made upon a certificate which is not founded wholly or in part upon facts observed by the signatory (*p*). An order may not be made unless each medical practitioner who signs a certificate has personally examined the alleged defective within twenty-one days before the date of the presentation of the petition (*p*). A certificate is invalid if either of the persons signing it is the petitioner, or the husband or wife, father or father-in-law, mother or mother-in-law, son or son-in-law, daughter or daughter-in-law, brother or brother-in-law, sister or sister-in-law, partner, or assistant of the other of them or of the petitioner (*q*). [216]

As indicated, *ante*, p. 84, a certificate is likewise invalid if it is signed by any of the persons there mentioned.

In the case of action being taken by the Home Secretary under sect. 9 of the Act of 1913 for the transfer to an institution for defectives of a defective who is undergoing imprisonment or detention, the certificates of two duly qualified medical practitioners are required as to the condition of the defective.

At the expiration of the first year after the order was made and of the second year and thereafter at the expiration of each period of five years the Board of Control must consider a special report on the mental and bodily condition of the defective, made in the case of a person detained in an institution by the medical officer of that institution, and in any other case by a duly qualified medical practitioner (*r*). This report must be accompanied by a certificate (*s*) that the defective is still a proper person to be detained in an institution or under guardianship, and the person sending the special report must also give the Board such further information concerning the defective as they may require. When a defective, who under an order has been sent to an institution or has been placed in an institution by a parent or guardian, is absent from the institution whether under licence or in other regular manner, the deficiency authority may for the purposes of the special report make arrangements for his examination by a duly qualified medical practitioner residing in the locality where the defective is for the time being, and the report made in any such case must state whether, in the opinion of the medical practitioner, the continuance of the order is required in the interests of the defective (*t*). The deficiency authority may pay for such a report.

For the technique of medical examination special knowledge is necessary. The signatory must clearly satisfy himself that the examinee is a mental defective within the meaning of the Acts. He must specify clearly and separately the grounds on which he forms this conclusion,

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(*n*) Mental Deficiency Regulations, 1935, form P4.

(*o*) *Ibid.*, form P6.

(*p*) *Ibid.*, art. 18.

(*q*) *Ibid.*, art. 18.

(*r*) Act of 1913, s. 11 (2), (4); 11 Halsbury's Statutes 168.

(*s*) Mental Deficiency Regulations, 1935, form D2.

(*t*) Act of 1927, s. 6; 11 Halsbury's Statutes 200.

that is, from facts observed at the time of examination, those observed prior to examination and those communicated by others. [217]

**Conclusion.**—It has only been possible to summarise the more important points in connection with this subject. Much information upon administrative practice and the difficulties to be coped with will be found in the Annual Reports of the Board of Control (*u*) and in the Report of the Mental Deficiency Committee of 1929 (being a joint committee of the Board of Education and the Board of Control).

The medical officer may consult "Mental Deficiency Practice" by F. C. Shrubbsall and A. C. Williams, University of London Press, Ltd., 1932, for the clinical aspects, mental tests, etc.

The most important voluntary body dealing with mental defectives is the Central Association for Mental Welfare, 24, Buckingham Palace Road, S.W.1. [218]

**London.**—By sect. 27 of the Act of 1913 (*a*) the L.C.C. are the deficiency authority for the whole of London, inclusive of the City. See also title MENTAL DISORDER AND MENTAL DEFICIENCY. [219]

(*u*) May be purchased of H.M. Stationery Office, Kingsway, W.C.2.

(*a*) 11 Halsbury's Statutes 176.

## MENTAL DISORDER AND MENTAL DEFICIENCY

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**Introductory.**—The earliest legislation dealing with persons afflicted with mental disorder had for its object the protection of their possessions rather than provision for their care. In the reign of Edward II. a Statute (*a*), still in force, declared that the King should have the custody of the lands of natural fools, taking the profits without waste or

(*a*) Stat. (*temp. incert.*), c. 11, *Prerogativa Regis* ; 3 Halsbury's Statutes 53. Revised Statutes, Vol. I., p. 81.

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destruction, finding them necessities and returning the lands to the rightful heirs on their decease. A further chapter in the Statute (*b*) provides that the King, when the wit and memory of any person who "beforetime hath had his wit and memory" happens to fail, shall see that his lands be safely kept without waste or destruction, and that he and his household shall be maintained competently from the profits of the same, taking nothing for his own use, the residue to be delivered unto them when they come to right mind. Under each heading it is declared that the object is to prevent alienation of the land, to the detriment of the heirs or (in case of the lunatic) the lunatic himself upon recovery. The distinction made between the idiot or natural fool, and the lunatic whose mind had been affected later was important; the idiot had only to be provided with necessities out of his lands, whereas in case of the lunatic no profit could be made. From a period which may be as early as the Statute itself (*c*), the Lord Chancellor, on behalf of the King, made an inquiry into the state of mind of the person concerned, and if he found him to be an idiot or a lunatic committed him to the care of some person who was called his committee. This manager or committee of the estate was held accountable to the heirs of an idiot, to the lunatic himself upon recovery, or to his heirs on his death. By reason of the distinction above mentioned, the care of the lands of an idiot might be a profitable venture; hence the phrase "begging a man for a fool." Ultimately the abuse made the Chancellor, or the Court of Wards and Liveries exercising similar jurisdiction (*e*), reluctant to find a person an idiot, preferring to find him a lunatic wherever possible. The Lord Chancellor's jurisdiction is now vested in a Judge or Judges and Masters in Lunacy: see Parts III. and IV. of the Lunacy Act, 1890 (*d*). [220]

Towards the end of the seventeenth century there began to spring up in this country institutions where lunatics were cared for. The underlying reason for their establishment appears not to have been a desire to secure the better care of the mentally afflicted but to congregate them out of sight in a position where they could not offend the feelings of the public and their friends. They were maintained in these institutions out of their own estate or by their friends or, when public safety and comfort demanded it in other cases, out of the Poor Funds. In such "mad houses" or asylums the conditions were apt to be extremely bad, but nearly a century elapsed before any attempt at an improvement was made. In 1774 was passed the first Act (*e*) for licensing and inspecting madhouses. In London and neighbourhood this duty was to be carried out by five Fellows of the College of Physicians acting as Commissioners, and in the rest of the country by the Justices of the Peace, but little inspection and visitation was done, and the abuses at which the appointment of Commissioners had been aimed continued. Reforms in treatment introduced by Pinel in France and the Society of Friends in England, together with recurring parliamentary inquiries, gradually roused public opinion, and in 1828 (*f*) the Act of 1774 was repealed. Metropolitan Commissioners of Lunacy were set up for London and Westminster, places within five miles thereof,

(*b*) Stat. (*temp. incert.*), c. 12, *Prerogativa Regis*; 3 Halsbury's Statutes 53.

(*c*) Lord Campbell, "Lives of the Chancellors" (Introduction).

(*d*) 11 Halsbury's Statutes 52 *et seq.*

(*e*) Regulation of Madhouses Act, 1774; 14 Geo. 3, c. 49.

(*f*) Care and Treatment of Insane Persons Act, 1828; 9 Geo. 4, c. 41.

and the county of Middlesex (*g*). In 1842 the number of metropolitan commissioners was increased, and their functions were extended to the whole of England and Wales. In the forty years that followed many Acts dealing with the subject were passed and ultimately the legislation was consolidated in the Lunacy Act, 1890, the first of the Lunacy and Mental Treatment Acts, 1890 to 1930, which govern the position in lunacy to-day. In the Act of 1890 a lunatic means an idiot or a person of unsound mind, so that the old distinction between the idiot and the lunatic is no longer maintained.

The Mental Deficiency Act, 1913 (*h*), with its amending Acts of 1925 and 1927, forms the basis of the law with respect to other feeble-minded persons. The Elementary Education (Defective and Epileptic Children) Act, 1899, should also be mentioned; it enabled local authorities to provide for the education of mentally defective children who could not receive proper benefit from the instruction in ordinary schools, but who could benefit from teaching in special schools or classes (*i*). [221]

**Classification of the Mentally Afflicted.**—It is convenient to group the mentally afflicted into two divisions, roughly corresponding to the old classes of natural fools and lunatics. The first group, the mentally defective, comprises those whose mental development has been interfered with by some condition existing either at birth or arising before the age of eighteen years; the second group (persons of "unsound mind" or lunatics) comprises those whose mental faculties have failed in later life.

Mental defectives are placed in four classes by the Mental Deficiency Act, 1927, sect. 1 (*j*): the idiot, the imbecile, the feeble-minded and the moral defective. All suffer from mental defectiveness which is stated in sub-sect. (2) of the section to be a condition of "arrested or incomplete development of mind existing before the age of eighteen years whether arising from inherent causes or induced by disease or injury." Mere dullness of mind or delay in intellectual development is not mental defectiveness. This classification is difficult to apply; its interpretation may become a matter of personal opinion. When the mental condition changes a case may be transferred from an institution for mental defectives to an institution for lunatics and *vice versa* (*k*). The distinction made between the first three classes of mental defectives is essentially one of degree: the idiot is unable to guard himself against common dangers; the imbecile is incapable of managing his affairs, or, in case of a child, of being taught to do so; the feeble-minded requires care, supervision, and control, for his own protection or the protection of others. The fourth class, the moral defective, would without his moral defect be often classified among the feeble-minded, but may vary in degree from the low-grade idiot upwards. The characteristic of persons in this class is a strongly vicious or criminal propensity.

Children are classed as feeble-minded when they appear to be permanently incapable, by reason of mental defect, of receiving proper benefit from the instruction in ordinary schools. This, the general

(*g*) Act of 1828, *supra*, amended and re-enacted by Care and Treatment of Insane Persons Act, 1832 (2 & 3 Will. 4, c. 107).

(*h*) 11 Halsbury's Statutes 100.

(*i*) Now consolidated in the Education Act, 1921; 7 Halsbury's Statutes 130.

(*j*) 11 Halsbury's Statutes 100, 200.

(*k*) Mental Deficiency Act, 1913, s. 16; 11 Halsbury's Statutes 171.

class of feeble-minded children under the Mental Deficiency Acts, is further sub-divided by the operation of the Education Act, 1921 (*l*), into those children who cannot receive benefit from instruction in special schools or classes provided under Part V. of this Act and those who can.

In the second group of the mentally afflicted are those who are by the Mental Treatment Act, 1930, sect. 20 (*m*), directed in future to be known as persons of unsound mind; they are those formerly called lunatics (and the section authorises continued use of the term in relation to "criminal lunatic" and to persons detained as lunatics outside England and Wales). The new euphemism is not further defined; it does not make for exactness or simplicity, and can be given a wide interpretation. The new statutory class of persons of unsound mind comprises idiots by sect. 341 of the Lunacy Act, 1890 (*n*), and it could be held to include all mental defectives. Omitting the mental defectives, including idiots (as seems necessary to make the statutory definitions work together), persons of unsound mind are to be understood as being persons who have attained a full normal mental development but who from illness, accident, or some cause known or unknown, suffer from such a defect of mind that they deviate materially—to a degree going beyond mere peculiarity or eccentricity—from the ordinary standards of human conduct, intelligence, reason and judgment. [222]

**Admission of Persons of Unsound Mind to Institutions.**—A person of unsound mind need not necessarily come within the control of the law; he may be maintained or cared for by his friends, and left alone unless an application is made for his care in an institution, or the management of his affairs. On the other hand, the person of unsound mind may require care and treatment which his friends may be unable to provide. A person of unsound mind may be so found by inquisition that is by procedure under the control of the judges in lunacy, by virtue of Part III. of the Lunacy Act, 1890 (*o*). Local authorities are not concerned with this procedure, except to know that sect. 12 of the Act of 1890 authorises reception of such a patient in a mental hospital upon an order signed by the patient's committee or by a Master of the Court. Other persons may not be received into an institution without an order of a judicial authority (*ibid.*, sect. 4). The judicial authority is (normally) a justice of the peace specially appointed (sects. 9, 10). The scheme of the Act is that the justice acts upon a petition, preferably from a spouse or relative (sect. 5) supported by two separate medical certificates (sect. 4). The judicial authority is not bound to see the patient (sect. 6), but if he does not do so the patient may (unless it would in the opinion of the medical officer of the institution be prejudicial to his health) claim to see some different judicial authority who is to report to the Board of Control (sect. 8). Alternatively (sect. 13) any constable or relieving officer having knowledge of a person of unsound mind who is not under proper care and control, or is cruelly treated or neglected, is to report the case to a judicial authority, whereupon proceedings follow as closely as may be those upon a petition by relatives. Two medical certificates are necessary. If the patient requires relief at the cost of the rates for his proper care, the judicial authority so orders and the patient becomes a rate-aided patient of

(*l*) S. 55; 7 Halsbury's Statutes 161.

(*n*) 11 Halsbury's Statutes 130.

(*m*) 23 Halsbury's Statutes 171.

(*o*) *Ibid.*, 52.

unsound mind. To distinguish him from the private lunatic, and because the poor law authorities were responsible for maintenance, the name formerly used was "pauper lunatic," but the change of name was desirable because many of these patients would not have been paupers but for their lunacy.

A person already in receipt of public assistance, or a person of unsound mind (whether receiving public assistance or not) who is wandering at large, may be brought before a justice (sects. 14—16) who may send him to an institution upon one medical certificate.

Among rate-aided patients of unsound mind are large numbers of persons whose intellect, through age, has failed and others whose unsoundness of mind has passed from an acute to a chronic stage, leaving them harmless, and requiring simple care and supervision. These persons differ little in their mental condition from mentally defective persons, but they are dealt with under the lunacy law and may be cared for in public assistance institutions having suitable accommodation (p). [223]

Criminal lunatics form a special class, dealt with under special legislation (q).

In the early stages of mental illness treatment is most efficacious, but such treatment in the past has been seldom sought as the patient and his friends did not desire it to be established that he was a person of unsound mind. The Mental Treatment Act, 1930 (r), was passed to deal with these conditions, and it brought into existence two other classes of persons of unsound mind, voluntary patients and temporary patients, who could be received into institutions on application and medical recommendation alone. Voluntary patients make an application to the person in charge of the institution in order to submit themselves for treatment of their mental illness. This can be done by a parent or guardian if the person is under sixteen years of age, but the application has then to be accompanied by a written recommendation from a registered medical practitioner (s). Under sect. 5 of the same Act, temporary patients, that is those suffering from mental illness, likely to benefit by temporary treatment, but for the time being incapable of expressing themselves as willing or unwilling to receive such treatment, may on a written application, by or on behalf of the nearest relative or person in charge, accompanied by a recommendation signed by two registered medical practitioners, one of whom is to be a practitioner approved by the Board of Control for the purpose, and the other, if practicable, the patient's usual medical attendant, be received in an institution maintained by a local authority or otherwise approved by the Board of Control, for the reception of such temporary patients. Such a person may also be received into charge for temporary treatment as a single patient, with consent of the Board of Control. A temporary patient cannot be detained as such for a longer period than six months unless the Board of Control are satisfied that his early recovery is reasonably probable. In that case they may extend the period for three months at a time, but not for more than six further months (i.e. twelve in all) (t). Sect. 6 of the same Act empowers a local

(p) Lunacy Act, 1890, ss. 24, 25; 11 Halsbury's Statutes 27—29.

(q) For list of Acts, see 11 Halsbury's Statutes 4.

(r) 23 Halsbury's Statutes 154.

(s) *Ibid.*, s. 1.

(t) *Ibid.*, s. 5 (11) and (13); 23 Halsbury's Statutes 160.

authority to lodge a voluntary patient in any of their institutions ; also to arrange for out-patients and after-care. [224]

**The Authorities dealing with the Mentally Afflicted.** *Central.*—The main central authority dealing with mental deficiency and unsoundness of mind is the Board of Control, the constitution of which is now determined by sect. 11 of the Mental Treatment Act, 1930 (u). This Board was first constituted as a result of the Mental Deficiency Act, 1913, displacing the old Commissioners in Lunacy under the Lunacy Acts. It has extensive powers of exercising general supervision over the administration of the Mental Deficiency and Lunacy Laws ; approving institutions, visiting and inspecting institutions, and providing mental deficiency institutions for certain classes of defectives. The Board is given certain powers to report local authorities to the Minister of Health for failure to provide sufficient accommodation (a) and for making default in the performance of duties under the Mental Deficiency Acts (b). As a matter of administrative convenience, the Mental Treatment Act, 1930, transferred to the Board of Control several of the powers and duties formerly exercisable by the Minister of Health, but this transfer did not materially affect the position that, so far as lunacy and mental deficiency is concerned, the Board of Control acts as the central administrative department responsible generally to the Minister of Health. With respect to the criminal lunatic and the criminal who has been found mentally defective while undergoing imprisonment, the Home Secretary exercises jurisdiction, in the latter case by initiating steps for the transfer of the mental defective to a suitable institution either directly conducted by the Board of Control or under its general supervision (c).

The Board of Education is concerned with the welfare of the mentally defective child, particularly with suitable education for the feeble-minded child who can be educated in special schools or classes ; with ascertaining the causes of mental deficiency in childhood ; and with taking steps to ascertain what children are unable to benefit from special education or are about to be discharged from special schools or classes (d). [225]

**Local. Mental Deficiency.**—In local administration under the Mental Deficiency Acts county councils and county borough councils are the authorities concerned, each of whom must constitute a special committee for the purposes of the Acts. This committee is to include persons not being members of the council but having special experience of the work ; some are to be women, but the majority of the committee must be members of the council. The rules for these committees and the general duties of local authorities are set out in the Mental Deficiency Act, 1913 (e), and consist shortly of the ascertainment of the mental defective persons in their area, the provision of suitable accommodation in institutions for such of these persons as require it, and the provision of suitable supervision and guardianship for others and the like. These authorities may join for the purpose of the exercise and performance of any of their powers, and the Minister of Health

(u) 23 Halsbury's Statutes 165.

(a) Lunacy Act, 1890, s. 247 ; 11 Halsbury's Statutes 101.

(b) Mental Deficiency Act, 1913, s. 32 ; *ibid.*, 180.

(c) *Ibid.*, s. 9 ; *ibid.*, 167.

(d) Education Act, 1921, s. 55 ; 7 Halsbury's Statutes 161.

(e) Ss. 29, 30 ; 11 Halsbury's Statutes 177, 178.

may make an order for the constitution of such a joint committee or joint Board (*ibid.*, sect. 20). [226]

*Local. Patients of Unsound Mind.*—In lunacy (now unsoundness of mind) the position is more complicated. The local authority for providing asylum (now mental hospital) accommodation is the county council and county borough council, and certain specified borough councils (*f*). The authority responsible for the cost of treatment and maintenance of rate-aided cases in mental hospitals is the public assistance authority also, since the L.G.A., 1929, the county or county borough council (*g*). Some local authorities are combined for providing mental hospitals, by local Acts, for example Lancashire County (Lunatic Asylums and other Powers) Act, 1891 (c. xx.); West Riding of Yorkshire Asylums Act, 1912 (c. ci.); and Staffordshire Asylums Act, 1922 (c. xcii.). The Boards set up under the first two Acts are renamed Mental Hospital Boards, by the Mental Treatment Act, 1930 (*h*). Local authorities may, subject to the approval of the Minister of Health, also agree to unite in providing and maintaining a district asylum or contract for the use of accommodation in other asylums (*i*), and under sect. 6 of the Act of 1930 may also contribute to voluntary associations for prevention and treatment of mental disease, and to research, with the approval of the Board of Control. [227]

*Education.*—The duties of education authorities with respect to feeble-minded children are carried out by the local authority for elementary education, which in county districts differs in many areas from the county council (see title EDUCATION AUTHORITY). In county areas arrangements must be made to secure close co-operation and understanding between the authority for mental deficiency and the authority to educate the feeble-minded child. The local education authority is required to perform such duties in relation to defective children as are imposed on it by the Mental Deficiency Acts. [228]

Epileptic, blind, deaf and physically defective children do not necessarily belong to the class of mental defectives, but the congenital epileptic frequently becomes a mental defective, while the deaf and physically defective often show marked dullness and backwardness. The provisions of the Education Act, 1921, with respect to mental defectives are with certain modifications generally applicable to blind, deaf, epileptic and other defectives. Thus education suitable to their needs must be given to them and special schools may be provided which under certain circumstances they must attend up to the age of sixteen years. These children, when they become mentally defective, should be dealt with generally as mentally defective children because the mental defect becomes the main defect and, more than any other defect, demands for them continuous care, supervision and control.

See titles EDUCATION SPECIAL SERVICES, and BLIND, DEAF, DEFECTIVE AND EPILEPTIC CHILDREN. [229]

*Institutions.*—In mental deficiency the Board of Control, under sect. 85 of the Mental Deficiency Act, 1913 (*j*), have established and maintain institutions for defectives of dangerous and violent propensities. These are known as State Institutions. Apart from this type of institution accommodation for mental defectives is provided

(*f*) Lunacy Act, 1890, s. 240; 11 Halsbury's Statutes 99.

(*g*) 10 Halsbury's Statutes 893.

(*h*) S. 20; 23 Halsbury's Statutes 171.

(*i*) Lunacy Act, 1890, ss. 242, 243; 11 Halsbury's Statutes 100.

(*j*) 11 Halsbury's Statutes 181.

in certified institutions, certified houses, and approved homes. The Board of Control, if satisfied of the fitness of the premises provided and of the persons proposing to maintain them for such purposes, grant a certificate and the institutions so certified are known as certified institutions. In addition also the Board may, on the application of the authority and with the consent of the Minister of Health, approve premises provided by a public assistance authority as if they were a certified institution. Persons received into these premises as mental defectives are not deemed to be in receipt of poor law relief. Where some person has provided a house for defectives for private profit and it has been certified by the Board of Control for the reception of mental defectives this is known as a "certified house." Instead of applying for this certification, the person might apply for the approval of the Board of Control of the premises as an "approved home," and, where premises are provided wholly or partly by voluntary contributions and have been approved by the Board, such also become an approved home (for the differences between "certified houses" and "approved homes," refer to sects. 49, 50 of the Act of 1913 (*k*)). [230]

A large and increasing amount of the accommodation for mental defectives in institutions is now provided by local authorities, many having built new institutions for the purpose. Land may be acquired by a county council in accordance with sect. 159 of the L.G.A., 1933 (*l*) (a power available for all purposes of county councils) and in the case of the council of a county borough as for the purposes of the P.H.A. (*m*). Such land may be acquired compulsorily but is more frequently acquired by agreement (see title ACQUISITION OF LAND (OTHER THAN COMPULSORY)).

For the second group of the mentally afflicted (see "Classification," *ante*, at p. 99), the institutions provided are mental hospitals, hospitals and licensed houses. A public assistance institution cannot be treated as one of these institutions for persons of unsound mind (*n*). Mental hospitals are provided by the local authorities mentioned above as dealing with the mentally afflicted; hospitals are hospitals or parts of hospitals or other institutions not being mental hospitals receiving persons of unsound mind and supported wholly or partly by voluntary contributions, and licensed houses are premises in which persons of unsound mind are received for profit. Hospitals are registered by the Board of Control, and licensed houses licensed by the Board of Control if situated in places within their immediate jurisdiction and by the justices if situated elsewhere (*o*). There is much similarity between these classes of institution and those provided in mental deficiency except for the differences in licensing and registering. It should be noted that the Board of Control does not establish and maintain a state institution for lunatics. [231]

(*k*) 11 Halsbury's Statutes 187, 188.

(*l*) 26 Halsbury's Statutes 302.

(*m*) Mental Deficiency Act, 1913, s. 38; 11 Halsbury's Statutes 182.

(*n*) Lunacy Act, 1890, s. 24; 11 Halsbury's Statutes 27. But note that under s. 26 of that Act a chronic harmless person of unsound mind may be lodged in a public assistance institution, while remaining on the books of the mental hospital.

(*o*) *Ibid.*, s. 208 and Sched. III. The immediate jurisdiction comprises London, Middlesex, and parts of Essex, Kent and Surrey. Cf. jurisdiction of the metropolitan commissioners under the Act mentioned in note (*g*), on p. 99, *ante*.

**Psychiatric and other Clinics.**—The power to treat out-patients for prevention of mental illness has been mentioned above. Clinics have been established in many areas. They are known sometimes as psychiatric clinics, but most frequently they appear merely as special outdoor departments of general hospitals. The association of such clinics with other out-patient departments has the advantage that it encourages patients to come forward for early treatment, or at least does not deter them, while at general outdoor departments various types of investigation and treatment are more easily arranged for.

Among the young, the child presenting peculiarities of behaviour is now in some areas studied from the psychiatric, psychological and social standpoint in child guidance clinics. Such clinics usually work in association with school clinics under the education authority, and receive cases frequently from the juvenile courts. [232]

**Admission of Defectives to Institutions.**—It has already been pointed out that the person of unsound mind does not necessarily come within the control of the law, and the same is true with respect to mental deficiency. A person is not liable to be dealt with as a mental defective unless, in addition to his being a defective, one or other of certain conditions are present of which the following are examples: found neglected or cruelly treated, or without visible means of support; found guilty of crime or liable to be sent to a reformatory; habitual drunkenness; and receiving poor law relief while pregnant of or giving birth to an illegitimate child (*p*). More frequent is the case in which the local education authority gives notice to the mental deficiency authority of a child requiring supervision or guardianship, incapable of benefiting by education or about to be withdrawn at the age of sixteen years from special schools or classes. This is held to be a concomitant condition rendering the person liable to be dealt with. In any case the parent or guardian of an idiot or imbecile can take proceedings to send his child to an institution for defectives, if the case is certified as such by any two medical practitioners, one of whom is approved for the purpose by the local authority or the Board of Control; and if the child is merely defective and under the age of twenty-one years the parent or guardian, with the same two certificates, and in this case a certificate from a justice, may send the defective to an institution (*q*). The general policy of the law, therefore, in regard to patients of unsound mind and mental defectives is to require not merely proof of the unsoundness or mental deficiency as evidenced by medical and such other evidence as is available, but also to require evidence of some circumstance or circumstances, affecting society or some other person or persons than the lunatic or mental defective himself, before an order for the retention of the lunatic or mental defective in an institution or under such guardianship as affects his liberty will be made.

For the feeble-minded child, who may be required to attend a special school, the safeguards consist of medical certification by the certifying officer and compulsory consultation between the parents of the child and the local education authority (*r*). [233]

**Authorities and Functions Excluded from Title.**—The authorities and functions discussed above are those with which local authorities

(*p*) Mental Deficiency Act, 1913, s. 2; 11 Halsbury's Statutes 161.

(*q*) *Ibid.*, s. 3.

(*r*) Education Act, 1921, s. 58; 7 Halsbury's Statutes 164.



are concerned. No attempt has been made to deal with the functions of the Lord Chancellor, the Judges, the Masters, the Lord Chancellor's Visitors, or other authorities concerned with inquisitions and with the property of persons of unsound mind. Information will be found at p. 5 and following pages of 11 Halsbury's Statutes. [234]

**London.**—In London the local authorities for the purposes of the Lunacy Act, 1890, are the county council and the City corporation (*s*). By the L.C.C. (General Powers) Act, 1915, Part VII. (*g*), the provisions of the Lunacy Act, 1890, which deal with the appointment of visiting committees for asylums, were repealed so far as concerned the county (exclusive of the City) and as from the appointed day (April 1, 1917), the property and powers and liabilities, etc., of the committee were transferred to the council, and all matters relating to the exercise of the powers so transferred stood referred to the committee for the care of the mentally defective, constituted by the council under the Mental Deficiency Act, 1913 (*u*).

The Lunacy Acts are by sect. 36 to be construed as referring to the members of this committee when they refer to members of a visiting committee.

By sect. 37 the undermentioned provisions of the Act of 1890 ceased to apply to the county council :

Sects. 169—173, 175, 176, 190, 239 ; sub-sect. (3) of sect. 254 ; so much of sect. 255 as refers to the consent of a local authority ; sub-sects. (2), (3) and (4) of sect. 256 ; so much of sect. 258 as refers to the consent of a local authority ; so much of sub-section (2) of sect. 261 as refers to the sanction of a local authority ; sect. 266 ; sub-sects. (1), (2) and (3) of sect. 278 ; so much of sub-sect. (4) of sect. 283 as refers to the submission of statements to a local authority ; so much of sect. 284 as refers to directions to be given by a local authority ; para. (c) of sect. 326.

Provision is made in sect. 37 (2) for the keeping of annual accounts of each asylum and for the sending of abstracts to the Ministry and Board of Control. [235]

Sect. 10 of the Mental Treatment Act, 1930 (*a*), provides that the powers and duties imposed by the Act on local authorities shall, so far as the County of London, *i.e.* excluding the City, is concerned, devolve on the L.C.C. and any expenses so incurred, other than those of the provision, equipment and maintenance of buildings, shall be defrayed out of the general county rate, with the proviso that the council shall repay to the City corporation expenses incurred by that authority under the Act. Any expenses relating to the provision, equipment and maintenance of buildings under the Act shall be defrayed in the case of the council as expenses for special county purposes and in the case of the City corporation out of the general rate. A certificate by the City chamberlain that any expenses have been incurred under the Act shall be conclusive evidence that those expenses have been so incurred. Sect. 7 (as to visiting committees) does not apply to the county (exclusive of the City).

Under the above-mentioned provisions the L.C.C. has, since 1917, appointed a mental hospitals committee. [236]

(*s*) S. 240 ; 11 Halsbury's Statutes 99.

(*u*) Ss. 34, 35 ; *ibid.*

(*g*) Ss. 34—38 ; *ibid.*, 1830.

(*a*) 28 Halsbury's Statutes 164.

Sect. 22 of the L.C.C. (General Powers) Act, 1934 (*b*), re-enacts the powers contained in sects. 28 and 66 of the Mental Deficiency Act, 1913, and sect. 35 of the L.C.C. (General Powers) Act, 1915 (as to committee for care of defectives) which are repealed by sect. 76 and the Schedule to the Act, and provides for the appointment of a Mental Hospitals Committee for the purposes of the Lunacy and Mental Treatment Acts, 1890 to 1930, and the Mental Deficiency Acts, 1913 to 1927. This committee is deemed to be a committee for the care of the mentally defective for the purposes of the latter Acts. The Committee must consist partly of non-members of the council having special experience, some of whom must be women. Provision is made not only for delegation to the committee of the council's functions under the above-mentioned Acts but also for the delegation to other committees of the council of any matter arising out of and incidental to the functions under the Acts which, by reason of their relating also to a general service of the council, ought, in the opinion of the council, to be so referred. The council may also refer to the mental hospitals committee any matters, other than those arising under the Acts. Provision is also made for the disqualification in certain circumstances of members of the committee and for the appointment of and delegation to sub-committees.

The mental hospitals committee continues in office during the interval between the retirement of one council and the election of another (*c*). [237]

The L.C.C. is the sole authority for London under the Mental Deficiency Acts.

In London mental hospitals are now provided only by the county council and the City corporation. The effect of the L.G.A., 1929, is that the preliminary duties in connection with persons of unsound mind, such as measures for obtaining reception orders and the final certification of the patient, which were ordinarily the duty of the guardians of the poor, have devolved upon the council as far as the whole of the administrative county is concerned. The institutional treatment of these mental patients is now the undivided responsibility of the council so far as the county is concerned and of the City corporation so far as relates to the City.

It is to be noted that the undermentioned repeals of portions of the Mental Deficiency Act, 1913, effected by the L.G.A., 1933, do not apply to London :

Sect. 33 (1) and (2), expenses and borrowing.

Sect. 38 (3), acquisition of land in accordance with the L.G.A., 1888.

[238]

*Maudsley Hospital.*—The Maudsley Hospital was instituted by the L.C.C. as the result of gifts and bequests by the late Dr. Henry Maudsley, who initiated a scheme for the establishment of an institution which would provide for the early treatment of cases of acute mental disorder with a view to preventing the necessity for certification, and for pathological research. Powers were obtained in the L.C.C. (Parks, etc.) Act, 1915, sect. 6, to enable persons suffering from incipient mental disorder to be received as boarders and treated voluntarily on such terms as to

(*b*) 27 Halsbury's Statutes 413.

(*c*) L.C.C. (General Powers) Act, 1926, s. 36 ; 11 Halsbury's Statutes 1382. See also L.C.C. (General Powers) Act, 1933, s. 65 ; 26 Halsbury's Statutes 597 ; and 1934, s. 19 ; 27 Halsbury's Statutes 411.

payment as may be determined. The council has power to defray all expenses and the boarders may leave on twenty-four hours' notice. Rules made under sub-sect. (1) of sect. 338 of the Act of 1890 may prescribe the books and other documents to be kept. The hospital was opened by the council in 1923, having been previously used as a war hospital for cases of nervous disorder. [239]

## MENTAL HOSPITALS

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**Introductory.**—Until the early years of the nineteenth century no statutory provision was made for the maintenance, care and treatment of persons suffering from mental disease, except in so far as such persons came within the scope of the Poor Law. By sect. 20 of the Justices Commitment Act, 1743 (*a*), a dangerous lunatic might be apprehended on an order of two justices and locked up and chained, or transferred to the lunatic's parish of settlement for like treatment, but the only places of reception for the destitute insane were gaols, workhouses or a few charitable institutions such as Bethlehem Hospital in London, which seems to have received lunatics in the fifteenth century, but was made over by Henry VIII. as a civil hospital for lunatics and ceased to be an ecclesiastical foundation. By 48 Geo. 3, c. 96, justices in quarter sessions for counties and boroughs were enabled to provide asylums for criminal and pauper lunatics; this statute was repealed and substantially re-enacted in 1828 (*b*), but it was not until the Lunatic Asylums Act, 1845 (*c*), that such provision by quarter sessions became compulsory. The obligation to make provision was continued by the Lunatic Asylums Act, 1853 (*d*), and sects. 3 (*vi*) and 34 of the L.G.A., 1888 (*e*), transferred to county and county borough councils "the provision, enlargement, maintenance, management and visitation of and other dealing with asylums for pauper lunatics." The intention

(*a*) 17 Geo. 2, c. 5.

(*b*) By 9 Geo. 4, c. 40.

(*c*) 8 & 9 Vict. c. 126.

(*d*) 16 & 17 Vict. c. 97. Repealed by the Lunacy Act, 1890.

(*e*) 10 Halsbury's Statutes 689, 711.

of the Act of 1888 was that, in general, quarter sessions boroughs (other than county boroughs) should cease to be separate authorities under the Asylums Acts, and by sect. 38 (1) the powers of the justices in the smaller quarter sessions boroughs were transferred to the county councils. The position of the larger quarter sessions boroughs was governed by sects. 36, 86 (4). But later the local authorities were clarified by the Lunacy Acts, 1890 and 1891. [240]

The powers and duties of local authorities as to the provision of accommodation for the treatment of mental patients (other than mental defectives) are derived from the Lunacy Acts, 1890 and 1891, and the Mental Treatment Act, 1930 (f). Sect. 20 of the Act of 1930 (g) introduced new terms in substitution for "asylum," "pauper," and "lunatic," and in this title the terms "mental hospital," "rate-aided" and "patient" are used in substitution for the now obsolete terms.

It should be noted that in Lancashire, Staffordshire and the West Riding of Yorkshire, mental hospitals boards (including some or all of the county boroughs in each county) have been established by local Acts. These statutes incorporate or apply many of the provisions of the Lunacy and Mental Treatment Acts, 1890 to 1930, and in dealing with questions as to mental hospitals in these counties, reference must be made to the local legislation. By sect. 21 (2) of the Act of 1930, the Board of Control may by rules adapt and modify the Act of 1930 in its application to Lancashire, the West Riding, and Staffordshire. For the exercise of this power, see the S.R. & O., 1932, Nos. 666—668, [241]

**Central Authority.**—The central authority is the Board of Control, as to which see title BOARD OF CONTROL.

The central authority under the Lunacy Act, 1890, was the Home Secretary, but the majority of his functions under that Act were transferred to the M. of H. by the M. of H. (Lunacy and Mental Deficiency, Transfer of Powers) Order, 1920 (h), and certain of these powers have since been passed on to the Board of Control by sect. 14 and Second Schedule to the Mental Treatment Act, 1930 (i).

Wide powers of making rules with reference to mental hospitals are conferred on the M. of H. and the Board of Control by sect. 338 of the Act of 1890 (j), as extended by sect. 14 of the Act of 1930. The principal S.R. & O. affecting mental hospitals are: the Mental Treatment Rules, 1930 (k), and the Management of Patients' Estates Rules, 1934 (l). [242]

**Local Authorities.**—The local authorities established by sect. 240 of the Lunacy Act, 1890 (m), are (1) county councils, (2) county borough councils, (3) the council of each of the boroughs specified in the Fourth Schedule to the Act, (4) the Common Council of the City of London. Subject to any alteration of areas or boundaries which may take effect after the passing of the L.G.A., 1933 (n), the councils of the

(f) 11 Halsbury's Statutes 17, 144; 23 Halsbury's Statutes 154. The Lunacy Acts, 1908 and 1922, deal only with matters affecting the management and control of the property and affairs of patients.

(g) 23 Halsbury's Statutes 171.

(h) S.R. & O., 1920, No. 809.

(i) 23 Halsbury's Statutes 168, 175.

(j) 11 Halsbury's Statutes 129.

(k) S.R. & O., 1930, No. 1083; 23 Halsbury's Statutes 178.

(l) S.R. & O., 1934, No. 269; 27 Halsbury's Statutes 367.

(m) 11 Halsbury's Statutes 99.

(n) November 17, 1933.

administrative counties (*o*) and of the county boroughs named in Parts I. and II. of the First Schedule to the Act of 1933 are local authorities. The boroughs named in the Fourth Schedule to the Act of 1890 are: Barnstaple, Bedford, Berwick-on-Tweed, Bridgewater, Bury St. Edmunds, Cambridge, Colchester, Doncaster (*p*), Dover (*q*), Grantham, Gravesend, Guildford, Hereford, King's Lynn, City of London, Maidstone (*g*), Newark, Newbury, Newcastle-under-Lyme, New Sarum, New Windsor, Penzance, Poole, Rochester, Scarborough, Shrewsbury, Tiverton, Warwick, Wenlock and Winchester. Many of these boroughs have lost the status of local authority for mental treatment purposes owing to agreements for the reception of patients having come to an end and sect. 246 of the Lunacy Act, 1890 (*r*), having come into operation (*vide post*, p. 114).

Any question relating to mental hospitals, or to the maintenance of patients, arising between local authorities under the Act of 1890 and any other boroughs, any visiting committees, or any two or more of such parties may be referred to an arbitrator appointed by the parties, or, failing agreement, by the M. of H. (*s*). Sect. 151 (*4*), (*5*) and (*6*) of the L.G.A., 1933 (*t*), as to financial adjustments, apply to any sum agreed to be paid or awarded by an arbitrator (1891, s. 15). As the Arbitration Acts, 1889 to 1934, are not excluded by the Act of 1891, they will apply to any arbitration under sect. 14 of that Act. [248]

**Visiting Committees.**—Sect. 169 of the Lunacy Act, 1890 (*u*), provided that for every mental hospital there should be a visiting committee appointed annually by the local authority; this section was repealed in part by the Mental Treatment Act, 1930, and the appointment of visiting committees is now governed by sect. 7 of the Act of 1930 (*a*), which applies the unrepealed portions of sect. 169 of the Act of 1890. The effect of this legislation is:

(1) Every local authority (except in the administrative County of London) must appoint annually a visiting committee of not less than seven persons (including at least two women; see sect. 7 (*6*) of the Act of 1930), and must exercise through the visiting committee all powers conferred on the local authority by the Acts of 1890 and 1930 (except the power of raising a rate or borrowing); but the visiting committee must comply with any directions of the local authority as to which of the statutory methods of providing accommodation is to be adopted (1930, s. 7 (*1*)).

(2) Where a county borough has contributed towards the cost of a county mental hospital (*b*), the county borough council may appoint

(*o*) The Council of the Isles of Scilly (which area is for some purposes part of the county of Cornwall) are given power to contract with any visiting committee for the reception of rate-aided mental patients from the Isles (53 & 54 Viet. c. clxxvi.).

(*p*) Now a county borough.

(*q*) These boroughs ceased to be separate authorities by the operation of the Lunacy Act, 1891, s. 29.

(*r*) 11 Halsbury's Statutes 101.

(*s*) Lunacy Act, 1891, s. 14; 11 Halsbury's Statutes 146.

(*t*) 26 Halsbury's Statutes 389, 390.

(*u*) 11 Halsbury's Statutes 76.

(*a*) 23 Halsbury's Statutes 103.

(*b*) As to the appointment of visitors on the commencement of an agreement to unite, see 1890, s. 253, and "Agreements to Unite," *post*, p. 116. *Semble*, a "county mental hospital" is one provided wholly or in part at the cost of a county. *Cf.* the definition for the purposes of the L.G.A., 1888, contained in s. 86 (*5*) and left unrepealed by the Lunacy Act, 1890.

to be members of the visiting committee such number of members of the borough council as may be agreed upon or settled by arbitration under the Lunacy Act, 1891, s. 14 (1890, sect. 7 (2) applying 1890, sect. 169 (4)).

(3) Where a borough (other than a county borough) has contributed towards the cost of a county mental hospital, and the representatives of the borough on the county council are not entitled to vote for the appointment by the county council of the visiting committee, the borough council may appoint two members of the visiting committee (c) (1890, sect. 7 (2) applying 1890, sect. 169 (5)).

(4) Not more than one-third of the number of persons appointed to a visiting committee by a local authority may be persons who are not members of that authority (1890, sect. 7 (4)). [244]

The visiting committee appointed under sect. 7 of the Act of 1930 is the visiting committee of each institution maintained by the local authority under the Lunacy and Mental Treatment Acts, save where a separate visiting committee is appointed for an institution to which an agreement to unite (*vide infra*) relates (sect. 7 (3)). A visiting committee may appoint sub-committees, and may delegate to them any powers and duties (d), and must appoint a sub-committee for each hospital, where the visiting committee act in respect of more than one hospital (*ibid.*). The powers of appointment by county boroughs and boroughs, noted above, apply to sub-committees appointed for separate institutions (*ibid.*). [245]

Vacancies on a visiting committee are to be filled by the appointing authority, and continuing members may act, notwithstanding a vacancy (1890, sect. 171). A visiting committee holds office until the first meeting of their successors, and if default is made in electing a committee, the committee last elected continues in office as if re-elected (1890, sect. 172).

The provisions of sect. 59 of the L.G.A., 1933 (e), as to disqualifications for office as a member of a local authority, and of sect. 70 as to the disability of members for voting on account of interest in contracts, etc., apply to visiting committees, whether appointed by one local authority or by several local authorities (L.G.A., 1933, sects. 94, 95). The council who appoint, or those who concur in appointing, a visiting committee may make, vary and revoke standing orders respecting the quorum, proceedings and place of meetings of the committee, but subject to such standing orders the visiting committee may regulate their own proceedings; the person presiding at a meeting has a second or a casting vote (L.G.A., 1933, s. 96). No doubt the standing orders made under sect. 96 must not be such as to preclude the visiting committee from performing any of their statutory functions, and in view of the repeal by the L.G.A., 1933, of sect. 175 of the Act of 1890, which regulated the proceedings of the visiting committee, any standing orders, or resolutions of the committee under sect. 96 of the L.G.A., 1933, must not conflict with the provisions as to the proceedings of committees contained in sect. 75 and the Third Schedule to the Act of 1933. [246]

The duties as to visitation by the visiting committee are set out in

(c) This only arises when a borough is exempt from the county contributions for mental hospital purposes; *vide* L.G.A., 1933, s. 75; 26 Halsbury's Statutes 346.

(d) Presumably any such delegation can be revoked at any time.

(e) 26 Halsbury's Statutes 334.

sects. 188, 189 of the Lunacy Act, 1890 (f). At least two members must visit every part of the mental hospital at least once in every two months, and must see every patient therein, so as to give every patient, so far as possible, full opportunity of complaint. They must examine the order and certificate for the admission of every patient admitted since the last previous visitation, and the general books kept in the hospital, and must enter their remarks in and sign the visitors' book (sect. 188). Borough rate-aided patients received in a county mental hospital under contract must be visited at least once in every six months by not less than two members of the borough visiting committee appointed for the purpose; the result of the visit is to be reported to the borough council, and the visitors may be accompanied by a doctor, not being an officer of the mental hospital, who may be remunerated by an order on the borough treasurer (sect. 189). [247]

By sect. 190 of the Act of 1890, a visiting committee of every mental hospital is required to lay before each local authority to which the hospital belongs a report in writing which must deal with (1) the state and condition of the hospital, (2) its sufficiency to provide the necessary accommodation, (3) its management and the conduct of the officers and servants, and (4), the care of the patients in the hospital. The report is presented at the quarterly meeting of the council in November or at such other time as the council appoint, and a copy must be sent by the clerk of the visiting committee to the Board of Control within twenty-one days after presentation (g). As to other reports by visiting committees, *see post*, "Purchase, etc., of Land" and "Finance."

The position of a visiting committee *vis-à-vis* the local authority is one of limited autonomy; there is a statutory and irrevocable delegation to the committee of the mental treatment functions of the authority, except as regards raising a rate and borrowing money, but the position of the local authority is safeguarded by limitations on the spending power of the committee, by requirements that certain contracts of the committee shall be subject to the approval of the local authority, and that the weekly maintenance rate for rate-aided patients shall not exceed 14s. save in so far as it is increased by order of the local authority. On the other hand, the visiting committee control the appointment and dismissal of their officers and servants (including the clerk and the treasurer) and are responsible for their own financial and accounting arrangements. The foregoing matters are examined in greater detail later in this title. [248]

Perhaps the most important power in the hands of the local authority arises from the annual appointment of the committee, as in the event of an irreconcilable divergence of view between the two bodies, the local authority are in a position, at the next appointment of the committee, to effect a complete change of personnel.

A visiting committee are not a body corporate and have no statutory power of holding land, but they can sue or be sued in the name of the clerk for the time being; an action by or against a visiting committee does not abate on the death or removal of the clerk, but the clerk for the time being is deemed to be the plaintiff or defendant as the case may be (1890, sect. 176 (2)). Judgment may be obtained against a visiting committee although there is no fund in existence from which the judgment can legally be satisfied; and in an action on a contract

(f) 11 Halsbury's Statutes 83.

(g) Mental Treatment Rules, 1930, art. 125; 23 Halsbury's Statutes 206.

within the competence of the committee, the plaintiff may have his remedy in a decree for specific performance, or by *mandamus* (h). For a specific power of procuring releases from contracts for the sale or exchange of land and the raising of the consideration money for a release, see sect. 268 of the Act of 1890 (i), *post*. [249]

**Provision of Mental Hospitals and Mental Treatment.**—By sect. 238 (1) of the Lunacy Act, 1890 (k), a duty is imposed on the local authorities specified in the Act to provide and maintain a mental hospital or mental hospitals for rate-aided patients, and by sect. 6 (1) of the Act of 1930 (l), local authorities are obliged to investigate the needs of their areas and to take such steps as they consider necessary to provide and maintain suitable accommodation for the reception of temporary patients, namely persons who are likely to derive benefit from temporary treatment, but who are incapable of expressing willingness or otherwise to undergo treatment as voluntary patients under sect. 1 of the Act of 1930, and are therefore dealt with under sect. 5 without certification.

A local authority may (but are not obliged to) provide hospital accommodation for the treatment of private patients, either together with rate-aided patients or in separate hospitals (1890, sect. 241); similarly, under sect. 6 (2) of the Act of 1930, a local authority may receive a voluntary patient (*i.e.* a patient voluntarily submitting himself for treatment under sect. 1 of the Act of 1930) and treat and maintain him in any institution under their control on such terms or conditions as to payment or otherwise as may be agreed. Subject to the approval of the Board of Control, the local authority may contract for the reception and treatment of temporary or voluntary patients in any registered hospital, hospital or nursing home (or, in the case of temporary patients, any institution) approved by the Board of Control (*ibid.*). [250]

Under sect. 262 of the Act of 1890 (m), a local authority may provide a mental hospital outside their area and the council and justices of the area to which the hospital belongs have then full jurisdiction to act in the county or borough in which the hospital is situate, so far as concerns the regulation of the hospital and the powers conferred by the Lunacy and Mental Treatment Acts, 1890 to 1930, as if the hospital were situate in the proper jurisdiction of the council or justices. (See also Act of 1930, ss. 6 (4) and 22 (1)).

Sect. 6 (3) of the Act of 1930 also empowers a local authority: (1) to make arrangements by the provision of institutions or otherwise for the treatment as out-patients, gratuitously or otherwise, of persons suffering from mental illness; (2) to provide for after-care and contribute to the funds of after-care associations; (3) to contribute to the funds of voluntary associations for the prevention and treatment of mental illness (n); (4) subject to the approval of the Board of Control

(h) *Cf. Kendall v. King* (1856), 25 L. J. (C. P.) 132; 33 Digest 247, 1674, and *Devenish v. Brown* (1856), 26 L. J. Ch. 23; 33 Digest 247, 1679, both actions in respect of contracts made by visiting committees under the Lunatic Asylums Act, 1853.

(i) 11 Halsbury's Statutes 107.

(k) *Ibid.*, 99.

(l) 23 Halsbury's Statutes 161.

(m) 11 Halsbury's Statutes 105.

(n) Under this provision clinics have been established at general hospitals to which patients can resort for advice and treatment, without being required to attend at an institution generally known as a mental hospital.



to undertake research or contribute to the expenses of bodies engaged in research; and (5) to co-operate with other local authorities in exercising the powers of sect. 6 (3) and in sharing the expenses (o).

The provisions of the Act of 1890 as to the provision, equipment and maintenance of mental hospitals by local authorities and visiting committees are applied to the provision, etc., of institutions for the purposes of the Act of 1930 (*ibid.*, sect. 6 (4)). [251]

By sect. 242 of the Act of 1890 (p), a local authority may provide mental hospital accommodation in all or any of the following ways: (1) alone; (2) by agreeing to unite in providing and maintaining a district hospital with any other local authority; (3) by agreeing to unite with any other local authority for the joint use of an existing hospital, and, if thought fit, for its enlargement.

Under sect. 243, county boroughs have a special power of contracting with the visiting committee of a mental hospital (subject to the approval of the Board of Control) for the reception of the rate-aided patients of the borough; the consideration for the contract, and its duration, termination and terms generally are matters for agreement between the contracting parties, and whilst such a contract is in force, making adequate provision for rate-aided patients, the county borough council cannot be required to provide a hospital. Such a contract, being for rate-aided patients only, does not absolve a county borough from their obligation in respect of temporary patients under sect. 6 (1) of the Act of 1930, but by that enactment the local authority are only required to take such steps as they consider necessary.

The position of county boroughs is also affected by sect. 244 of the Act of 1890 (now largely spent), which provided that where a county borough had contributed to the cost of building and furnishing a county mental hospital, the existing liability of the borough council should continue until a new arrangement was made under sect. 244, and required the county council to provide for the county borough patients on the previously existing terms. The parties might either make a new arrangement, or go to arbitration. [252]

Sects. 245, 246 of the Act of 1890 affect only the boroughs in Sched. IV. to the Act. Where and so long as any such borough contributes to a county mental hospital, the borough is deemed to satisfy the requirements of the Act of 1890 as to the provision of mental hospital accommodation. The borough council may resolve to separate from the county, but must then give notice of the resolution to the clerk of the county council, and six months after the date of the notice, the borough becomes subject to the obligations of the Act as to the provision of accommodation, but remains liable to contribute to the county mental hospital until all the borough rate-aided patients have been removed from it (sect. 245). Where a Sched. IV. borough has contracted for the reception of the borough patients in the mental hospital of the county of which the borough forms part, the borough ceases, on the termination of the contract, to be a local authority for mental treatment purposes, and becomes liable to contribute to the county

(o) Agreements between local authorities for the joint exercise of functions under s. 6 (3) appear to be governed by s. 91 of L.G.A., 1933, as the words "or joint exercise of" in s. 6 (3) (c) are repealed by that Act. But, *semble*, the appointment of a joint committee for that purpose is still subject to the provisions of the Mental Treatment Act, 1930, as to the appointment of visiting committees; see proviso to s. 91 (1) of L.G.A., 1933; 26 Halsbury's Statutes 355.

(p) 11 Halsbury's Statutes 100.

rate in respect of the county mental hospital in like manner as the rest of the county (*g*) (sect. 246). The operation of sect. 246 has sometimes been avoided by the making of contracts (known as reception contracts) between the visiting committee of the borough and the visiting committee of some hospital other than the hospital of the county of which the borough forms part; this can be done under sect. 269 of the Act (*r*) which gives visiting committees a general power of contracting with other visiting committees for the reception of rate-aided patients. Such contracts are subject to the approval of and are terminable by the Board of Control, and cannot be made for more than five years, but are renewable. Reception contracts made on behalf of boroughs with the visiting committees of mental hospitals may not be terminated (if terminable) without the consent of the Board of Control. If that Board terminate a reception contract, the local authority are not absolved by the contract from their statutory liability to provide mental hospital accommodation, although the contract has not run its full course (1890, sect. 269 (*r*)). [253]

By sect. 270 of the Act of 1890, a visiting committee being satisfied that the hospital is more than sufficient for the rate-aided patients who can be lawfully received for the time being, may by resolution permit any other rate-aided patients to be admitted to the hospital. An undertaking by the sending authority to pay for maintenance and burial expenses (if necessary) and to remove the patient within six days after notice, may be required by the receiving committee. A resolution under sect. 270 may be rescinded or varied, and is intended to apply to arrangements of a less permanent nature than those effected by a reception contract.

Private patients may be received into any mental hospital on such terms as the visiting committee think fit (1890, sect. 271 (*1*)); as to the application of receipts in respect of private patients, see FINANCE, *post*. [254]

Since the transfer of public assistance functions to county and county borough councils under the L.G.A., 1929, it has been possible to make considerable use of the provisions of sects. 25, 26 of the Act of 1890 (*s*), in order to reduce the number of senile and harmless cases treated in mental hospitals; by sect. 25 a rate-aided patient, whom the medical officer of the hospital certifies as not recovered and a proper person to be kept in a public assistance institution as a mental patient, may be received in such an institution and detained against his will, provided that the medical officer of the public assistance institution certifies in writing that the accommodation in the institution is sufficient for the patient's care and treatment separately from the inmates of the institution who are not mental cases, or that the patient's condition is such that it is not necessary that he should be so kept separate. By sect. 26 the visitors of a mental hospital may, with the consent of the M. of H. and of the Board of Control, and subject to such regulations

(*g*) As originally enacted, s. 246 made the borough patients chargeable at out-county maintenance rate where the borough had not contributed to the cost of the hospital, but s. 18 of the Lunacy Act, 1891 (11 Halsbury's Statutes 140), substituted a contribution by the borough towards the expenses already incurred in providing the hospital, such contribution to be fixed by agreement or by arbitration. This obviates the difficulties which became apparent owing to the decision in *Howlett v. Maidstone Corpn.*, [1891] 2 Q. B. 110; 33 Digest 248, 1682.

(*r*) 11 Halsbury's Statutes 108.

(*s*) *Ibid.*, 20.

as they prescribe, arrange with a public assistance authority for the reception into a public assistance institution of chronic patients, not being dangerous; such patients remain on the books of the hospital. By sect. 19 of the Act of 1930 (*l*), the power of removal to and detention in public assistance institutions is extended to include hospitals provided by a county council or by a county borough council under the P.H.A., 1936 (*u*), and approved for the purpose by the council.

Public assistance authorities who are also mental hospital authorities may with advantage bear these points in mind in classifying and utilising their public assistance institutions.

The duties of a local authority in respect of the provision of mental hospital accommodation may be enforced under sect. 247 of the Act of 1890 (*v*) by the M. of H., on the report of the Board of Control; and a local authority may be required by the Minister to provide such accommodation in such manner as he may direct, and must forthwith carry such requisition into effect. Apparently such a requisition can be enforced by *mandamus*. [255]

**Agreements to Unite.**—Agreements to unite for the purpose of providing hospital accommodation are authorised by sect. 242 of the Act of 1890 (*a*); such agreements may be renewed as between all or any of the original parties thereto, and an agreement for further union is deemed to be an agreement to unite. Agreements to unite require the approval of the Board of Control (*b*).

A form of agreement to unite (Form 21) will be found in Sched. II. to the Act of 1890; this form may be used, where applicable, with such modifications as may be required, and if used, is to be deemed sufficient (1890, sect. 339), but the use of the statutory form is not obligatory, and whether or not this form is used, sects. 248 to 253 of the Act must be observed. Under sect. 248 (1) an agreement to unite must state: (1) the number of visitors to be chosen by each contracting party; one at least of the members appointed by each local authority appointing three or more members, must be a woman (1930, sect. 7 (6)); (2) the proportion in which the expenses of providing the hospital are to be borne by the contracting parties, and the basis of apportionment; and (3) where the agreement provides for the joint user of an existing hospital, the sum to be paid by each contracting party towards expenses already incurred.

Provisions in an agreement to unite, subjecting the visiting committee to any control not provided for by the Lunacy and Mental Treatment Acts, 1890 to 1930, are of no effect; but this does not affect the control of the Board of Control (1890, sect. 248 (2)). [256]

It will be observed that the requirement in sect. 248 (1) as to expenses refers only to the expenses of providing the hospital, but clearly the agreement should deal with the equipment, repairs and maintenance of the buildings, and in fact this point is covered in the statutory form of agreement. The proportion in which the expenses of provision are to be borne, as between the parties to the agreement, may be fixed according to the extent of the accommodation required by each party, or in proportion to the population of each county and borough con-

(1) 23 Halsbury's Statutes 171.

(2) See s. 181; 29 Halsbury's Statutes 447.

(3) 11 Halsbury's Statutes 101.

(4) *Ibid.*, 100.

(5) Act of 1890, s. 242 (3), as amended by Act of 1930, s. 14; 23 Halsbury's Statutes 168.

cerned according to the last census for the time being (sect. 240); rateable value is not a relevant factor, and population is not a satisfactory basis unless the agreement to unite is the sole means for the provision by the local authority of the statutory accommodation. The apportionment of expenses and any other terms of the agreement to unite, may be varied with the consent in writing of the majority of the visitors of each contracting local authority, subject to the sanction of the Board of Control; and the agreement may be varied otherwise in the same manner, but not so as to include any provision which could not have been contained in an agreement to unite in the first instance (1890, sect. 250). It will be observed that there must be written consents of a majority of each local authority's quota of visitors, and not merely a majority of those present at a meeting. An opportunity of revising the apportionment also occurs when an agreement for further union is made.

The payment of a capital sum towards expenses already incurred is a matter for negotiation; relevant considerations are the original cost of the hospital, the subsequent expenditure on improvements and additions, the value of the property at the commencement of the proposed union, and outstanding loan charges. In view of the provisions of sect. 267 (*infra*) as to dissolution of agreements to unite, it is essential that a local authority agreeing for the joint use of an existing hospital should pay a sum which fairly represents a proper proportion of the value of the capital assets at the time of payment; money so paid is credited to the county or borough fund, as the case may be, and must be applied to purposes to which capital is properly applicable (1890, sect. 252). [257]

Sect. 251 of the Act of 1890 requires that every agreement to unite shall as soon as possible be reported to the local authorities interested; the original agreement, and the originals of any varying agreement, are deposited with the clerk of the local authority within whose administrative area the hospital is situate; the original agreement may be inspected without payment by any member of the council of any of the contracting authorities (*c*). The clerk who receives the original agreement must send one copy to the Board of Control and to each of the contracting local authorities within twenty days of the delivery to him of the original.

When an agreement to unite has been reported, each local authority must elect their agreed quota of visitors; the visitors so chosen carry the agreement into effect and become the visiting committee (1890, sect. 253). Though this provision limits the visiting committee first elected to members of local authorities, it is submitted that this limitation is impliedly repealed by sect. 7 (4) of the Act of 1930. If this were not so, it might be impossible to comply with sect. 7 (6) as to the appointment of women members of the visiting committee. [258]

Sect. 267 of the Act of 1890, as amended by sect. 14 and the Second Schedule to the Act of 1930, provides for the dissolution of agreements to unite. Dissolution can be carried out, subject to the consent of the Board of Control, by a resolution passed by a majority of the whole number of the members of a visiting committee, apparently meaning a majority of the full number of members appointed by the local

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(c) *Seem*, a member of the visiting committee who is not a member of the council of a contracting authority has no right of inspection.

authorities (d) under sect. 169 of the Act, at a meeting summoned upon notice that the resolution is to be proposed thereat. Every local authority interested under an agreement about to be dissolved must elect a visiting committee to provide statutory accommodation before the dissolution takes effect (sect. 267 (2)). Compensation may be paid (as agreed upon and approved by the visiting committee carrying out the dissolution) by any local authority not having a mental hospital to any local authority which has a hospital and is receiving an annual fixed payment as remuneration for any expenses incurred (sect. 267 (3)). Real and personal property held for the purposes of the agreement may be divided by the visiting committee among the local authorities who are parties proportionately to their contributions thereto or interests therein, or in such proportions as the visiting committee, with the approval of the Board of Control, think fit. Money payments, in lieu of property, may be awarded to the parties entitled to share in the property, the amounts and the proportions in which the money is to be raised being subject to the approval of the Board of Control. Local authorities may borrow for this purpose under sects. 267 (5), 274 (e), with the consent of the M. of H. [259]

**Purchase, etc., of Land.**—The powers of a visiting committee in relation to the acquisition of land are derived from sects. 254, 260, 261, 264 and 265 of the Act of 1890 (f). It is made clear by sect. 6 (6) of the Act of 1930 (g) that the powers of purchasing land by agreement conferred on local authorities by the Act of 1890, are in substitution for and not in addition to any powers conferred by any previous Act for the purchase of land for mental hospital purposes; and the effect of sect. 179 of, and the Seventh Schedule to, L.G.A., 1933 (h), is to exclude from the operation of Part VII. of that statute transactions in land for the purposes of the Lunacy and Mental Treatments Acts, 1890 to 1930, in so far as the latter statutes contain enabling provisions.

There appears to be a general power exercisable through the visiting committee of acquiring land compulsorily for mental hospital purposes, but this question is very involved. As indicated *ante*, p. 108, the L.G.A., 1888, transferred to county councils the functions of the justices as to the provision of mental hospital accommodation; sect. 65 of that Act (i) gave county councils the power of acquiring land compulsorily for any of their powers and duties, and sect. 238 (4) of the Lunacy Act, 1890, gives to local authorities other than county councils, the powers conferred on a county council by sect. 65 of the Act of 1888. On the other hand, sect. 260 of the Act of 1890, incorporating the Lands Clauses Acts, excludes the provisions of those statutes relating to the purchase of land otherwise than by agreement. An opinion of the law officers of July 26, 1901, expressed the view that the provisions of sect. 238 (4) of the Act of 1890 amounted to a legislative recognition that county councils have powers of compulsory purchase for providing mental hospital accommodation; they considered that under the Act of 1890 county councils and other local authorities had powers of

(d) *Cf. Newhaven Local Board v. Newhaven School Board* (1885), 30 Ch. D. 350 at p. 361; 33 Digest 17, 64.

(e) As to borrowing for this purpose, see "Finance," *infra*.

(f) 11 Halsbury's Statutes 105, 105, 106.

(g) 23 Halsbury's Statutes 162.

(h) 26 Halsbury's Statutes 403, 500.

(i) 10 Halsbury's Statutes 730.

compulsory purchase for the purposes of the Act of 1890. Sect. 65 of the L.G.A., 1888, but not sect. 238 (4) of the Act of 1890, is repealed by the L.G.A., 1933, and under sect. 159 of that Act (*k*) a county council may be authorised to purchase land compulsorily for the purpose of any of their functions. It would appear, therefore, that a county council must rely on this section for powers of compulsory purchase for mental hospital purposes, and that any other local authority must rely on sect. 238 (4) of the Act of 1890, the reference therein to sect. 65 of the Act of 1888 being read as a reference to sect. 159 of the Act of 1933 by virtue of sect. 38 of the Interpretation Act, 1889 (*l*). In either case the procedure will be as provided by the L.G.A., 1933, sect. 160. *Semble*, that a power of compulsory purchase is not a power which the local authority must exercise by the visiting committee pursuant to sect. 7 (1) of the Act of 1930, as the view of the Law Officers was that the necessary notices and proceedings should be in the names of the local authority and the visiting committee, and probably this opinion still holds good for all classes of local authority. [260]

Sects. 258, 259 empower a visiting committee to provide for the burial of patients dying in the hospital, and of officers and servants, by appropriating or acquiring land not exceeding two acres for enlarging an existing burial ground or for providing a new burial ground, or by agreeing with some other persons who are willing to make provision for such burials; consents of the appointing local authorities and of the M. of H. are necessary (*m*). Provision is made for the consecration of the burial ground and the appointment of a chaplain, but public sentiment is against the provision of burial grounds at institutions and these provisions are rarely needed. By sect. 259, a visiting committee may arrange, with the consent of the Minister and churchwardens, for burials in the public burial grounds of parishes other than that in which a mental hospital is situate.

For the purpose of the acquisition of land by visiting committees, the Lands Clauses Acts are by sect. 260 of the Act of 1890 incorporated in that Act, except the provisions as to compulsory purchase, the sale of superfluous lands, the recovery of forfeitures, penalties and costs, and access to the special Act; the visiting committee are deemed to be "the promoters of the undertaking" and the Act of 1890 is the "special Act." [261]

Sect. 261 authorises a visiting committee, instead of purchasing land or buildings which they are authorised to purchase, to take a lease for a term of not less than sixty years at such rent and subject to such covenants as the committee think fit. With the sanction of each local authority concerned, a visiting committee may hire or take on lease from year to year, or for a term of years, and subject to such rent and covenants as they think fit, land or buildings for the employment of patients or for the temporary accommodation of patients for whom the hospital accommodation is inadequate. Hired or leased lands and buildings are deemed to be part of the hospital.

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(*k*) 26 Halsbury's Statutes 392.

(*l*) 18 Halsbury's Statutes 1005.

(*m*) Where under s. 1 of the Burial Act, 1853 (2 Halsbury's Statutes 210), the opening of a new burial ground has been prohibited by Order in Council, the approval of the M. of H. will be required.

Sect. 264 provides that any lands acquired (n) for the purpose of the Act of 1890 may be conveyed to the local authority being a county council, or to the municipal corporation of a borough, or, where more than one local authority are interested to those local authorities as joint tenants (o). The proper practice is for the contract for the purchase of land to be made in the name of the visiting committee, and for the legal estate to be conveyed to the local authority or authorities (n). [262]

Sect. 265 allows a local authority to appropriate for any purpose for which they are empowered to acquire land, any land or buildings which have been used for mental hospital purposes, and have been found unsuitable; the consent of the M. of H. is required, and he may impose conditions.

A special power of cancelling contracts for the purchase or exchange of lands is given by sect. 268 to visiting committees, including a committee appointed in the place of the committee who entered into the contract. The power arises where the lands contracted for are found unsuitable or are not required, and can apparently be exercised only by agreement with the other parties to the contract; the consent of the Board of Control to the procuring of the release and the Board's approval of any sum paid for it are required. The consideration for the release and expenses of the contract and release are to be raised in the same manner as purchase money of land, thus allowing a borrowing under sect. 274 and the L.G.A., 1933, with the consent of the M. of H. [263]

**Plans, Estimates and Contracts.**—Sect. 254 of the Act of 1890 (p) allows a visiting committee authorised to provide hospital accommodation to agree upon plans and estimates and to contract (i.) for the purchase of lands and buildings with or without fittings and furniture, (ii.) for the erection, restoration, enlargement and furnishing of buildings, (iii.) for the supply of clothing, and (iv.) generally, for all matters necessary for carrying into effect the authority conferred upon them. Plans and contracts for the first and second purposes (except furnishing), are not to be carried into effect until approved by the Board of Control (sect. 254 (2) as amended by the Act of 1891, sect. 16, and the Act of 1930, sect. 14 and Sched. II.). In connection with the statutory approval of plans under these sections, instances occur in which it is doubtful whether approval is necessary. The law officers have held that sect. 254 (2) as amended by sect. 16 of the Lunacy Act, 1891, requires all plans and contracts for the "erection, restoration and enlargement of buildings" to be approved by the Board of Control even though the amount proposed to be expended should not exceed £400 in any one year (see sect. 266), and that the question as to what is a "restoration" or "enlargement" of a building is a question of fact to be determined in each case. Whenever there is a doubt as to whether proposed works come within these terms the approval of the Board should be obtained. They did not think such matters as roads, water mains, drains, etc., would be considered "buildings"

(n) As a visiting committee are not a body corporate it is doubtful whether they can hold a legal estate in land, and *semble*, any acquisition of a legal estate within the meaning of the Law of Property Act, 1925, s. 1, should be effected by a conveyance, lease or assignment to the local authority or authorities concerned.

(o) As to the position of joint tenants, see Law of Property Act, 1925, ss. 34—36 and Sched. I.; 15 Halsbury's Statutes 211—213, 392.

(p) 11 Halsbury's Statutes 103.

within the sections unless in the case of the erection of new buildings to which they are incidental. The Board of Control have stated that, while plans of quite minor alterations, such as the building up or the provision of a doorway or window, etc., may not be of sufficient importance to require statutory approval, they suggest that, in all cases of structural alteration, plans should be submitted before being carried into effect.

A visiting committee must under sect. 254 (3) report to each local authority concerned, all plans, estimates and contracts and also the amount to be paid by each authority, and such plans, estimates and contracts are subject to approval by the local authorities (q), except where the amount to be expended does not exceed amounts already fixed by them. Where there is a difference between local authorities as to approval, the authority withholding approval must within four months after the plan, etc., has been reported to them, send a written statement of their objections to the Board of Control, who may direct the plan, etc., to be carried into effect with or without alterations, or direct such other plan, etc., as they think fit, to be carried into execution (sect. 254 (4)). It will be observed that this enactment cannot be invoked in the event of a difference between the visiting committee and the local authority. [264]

Provision is made by sect. 255 for the making of alterations or additions to a mental hospital for the reception of private patients; this may be effected by providing detached buildings or blocks or otherwise, and requires the approval of the M. of H. and the consent of each local authority by whom the hospital is provided.

No enlargement or improvement of a district mental hospital can be effected without the consent of all parties to the agreement under which it is provided (sect. 257).

With regard to contracts of visiting committees, the special conditions of sect. 256 of the Act of 1890, are repealed by the L.G.A., 1933, and a visiting committee appointed by a single local authority are bound by the standing orders with regard to contracts of that local authority, made under sect. 266 of L.G.A., 1933 (r). The position of a visiting committee appointed by more than one local authority is not entirely clear, but, *semble*, the committee can protect itself by complying with the standing orders as to contracts of one of the constituent councils (s), and, in any event, contractors are not concerned to inquire whether standing orders have been observed. [265]

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(q) Execution of a contract before approval by the local authority does not invalidate the contract, provided the contract approved by the local authority is identical in terms with that made by the visiting committee. Cf. *Devenish v. Brown* (1856), 26 L. J. Ch. 23; 33 Digest 247, 1679. But in practice contracts requiring Board of Control or local authority approval should be expressed to be provisional pending approval.

(r) 26 Halsbury's Statutes 447.

(s) It is understood that according to a letter addressed to the Mental Hospitals Association, the M. of H. has been advised that s. 266 of L.G.A., 1933, does not apply to joint committees, and has suggested that a joint committee would be well advised to follow the standing orders of one or other of the constituent local authorities, a view which is obviously all the stronger if those standing orders are the same or substantially the same. He is further advised that under s. 96 of the Act (26 Halsbury's Statutes 357) it is open to two or more of the constituent local authorities to make standing orders which will regulate the procedure of the visiting committee in making contracts and will thus take the place of the standing orders which s. 266 applies to a committee established by a single local authority.



**Finance.**—In considering the financial arrangements of mental hospitals, it is necessary to bear in mind the distinction between the expenses of providing the hospital and the maintenance expenses of the patients; prior to the operation of L.G.A., 1929, this distinction was of paramount importance as, apart from the comparatively few cases in which the poor law settlement of a rate-aided patient could not be ascertained, the cost of providing the hospital fell on the mental hospital authority, whereas the maintenance charges were borne by the boards of guardians. The transfer of poor law functions to county and county borough councils has simplified matters, but as so many hospitals have been provided by joint action and as certain of the Schedule IV. boroughs are still separate authorities, the distinction must still be kept in mind.

A separate financial organisation is established for mental hospitals and, by sect. 273 of the Act of 1890 (*t*), expenses to be paid and contributed by a local authority for the purposes of the Acts of 1890 to 1930, are to be paid by the treasurer of the local authority out of the rate fund to the treasurer of the mental hospital. It would appear that having made a payment in accordance with the statute, the responsibility of the treasurer of the local authority is at an end, and he is neither bound nor entitled to inquire into the subsequent application of the money by the visiting committee or their officers; but a local authority appears to be entitled to make such investigation of the mental hospital accounts as may be necessary to enable them to consider the reports of the visiting committee and to perform a statutory function such as the fixing of the maintenance rate. [266]

Mental hospital accounts (including the visiting committee's and officers' accounts) are subject to M. of H. audit under Part X. of the L.G.A., 1933, where the hospital belongs wholly or in part to a county council (*u*). A form of financial statement is prescribed by the Financial Statements (Mental Hospitals) Order, 1931 (*a*).

A visiting committee have no power of borrowing money; loans for mental hospital purposes are raised by local authorities under sect. 274 of the Act of 1890 (*b*), and the exercise of borrowing powers is subject to Part IX. of L.G.A., 1933. The Public Works Loan Commissioners may lend for mental hospital purposes (1890, sect. 274 (2)). It follows that as regards expenditure on buildings and works, once the mental hospital is built and paid for, the visiting committee have to deal only with expenditure on repairs and improvements from year to year, and that the method of financing these works (subject to the application of the building and repair fund, *infra*) is a matter for the local authorities. [267]

Sect. 266 (1) of the Act of 1890 empowers a visiting committee to deal with repairs, additions, alterations and improvements. The committee may, on their own authority: (1) order all necessary and ordinary repairs; (2) order all necessary and proper additions, altera-

(i) 11 Halsbury's Statutes 110.

(ii) See Lunacy Act, 1891, s. 18; 11 Halsbury's Statutes 147.

(a) S.R. & O., 1931, No. 746. A joint memorandum on mental hospital accounts was prepared jointly in 1932 by the Incorporated Association of Clerks and Stewards of Mental Hospitals, the Institute of Municipal Treasurers and Accountants, and the County Accountants Society, and is available to members of those bodies. The memorandum, which was discussed with officers of the M. of H., has no statutory effect, but affords a useful guide to officers responsible for these accounts.

(b) 11 Halsbury's Statutes 110. In part repealed by L.G.A., 1933.

tions and improvements to an amount not exceeding £400 in any one year.

These provisions override sect. 254 (3) of the Act of 1890 and render it unnecessary to submit, for the approval of the local authorities, plans, estimates and contracts which are within sect. 266 (1), but approval of the Board of Control must be sought in respect of plans and contracts for the erection, restoration and enlargement of buildings within the ambit of sect. 254 (2); but this does not include mere repairs or alterations in matters of detail (c). [268]

An order for repairs, additions, alterations or improvements to an amount exceeding £100 may only be given if the order is approved and signed by at least three visitors at a meeting of the visiting committee duly summoned upon notice that the expenditure is to be considered thereat (sect. 266 (2)). *Seem*, this applies to all repairs, etc., and not merely to works which the visiting committee may order on their own authority under sect. 266 (1). Expenditure, except for repairs, must be reported to the local authority concerned (sect. 266 (3)); and in the case of a district hospital the visiting committee must apportion the expenses incurred under sect. 266 in the proportion in which each local authority has contributed to the erection of the hospital, or, in the proportion fixed by an agreement to unite (sect. 266 (4)).

The visiting committee makes orders for payment of expenses incurred under sect. 266 on the treasurer or treasurers of the contributing local authority or authorities who must pay the amount mentioned in the order out of the rate fund (sect. 266 (5)). As payment on an order under the sub-section is made in pursuance of a specific statutory requirement, no order of the county council under sect. 184 (2) of the L.G.A., 1938 (d), is necessary. [269]

Additions, alterations and improvements to a mental hospital in excess of the powers conferred on a visiting committee by sect. 266 must be dealt with in the same manner as the provision of a new mental hospital, i.e. under sects. 254, 255, 257 of the Act of 1890. Thus in the case of a county council, sects. 86, 184 of the L.G.A., 1938 (e), as to the submission of estimates by the finance committee and as to payment out of the county fund apply to these expenses.

Sect. 283 of the Act of 1890 (f) provides for the fixing of maintenance rates payable in respect of mental patients; by sub-sect. (1) the visiting committee is required to fix a maintenance rate not exceeding 14s. weekly for rate-aided mental patients (g); if 14s. a week is found insufficient the local authority to whom the hospital belongs may by order add such weekly sum as seems to them necessary (sect. 283 (2)).

The visiting committee may fix a greater weekly sum not exceeding 14s. to be charged in respect of rate-aided patients other than those sent from a parish or place in the county or borough to which the hospital belongs or settled in the county or borough to which the hospital belongs (h) (viz. out-county patients). The power of the

(c) See p. 120, *ante*.

(e) *Ibid.*, 353, 406.

(f) 11 Halsbury's Statutes 113.

(g) This should cover not only the "maintenance expenses" (see *post*, p. 124), but the other expenses of each patient in the hospital and also the salaries of the officers and attendants of the hospital.

(h) S. 283 (3) as amended by the L.G.A., 1929, Sched. X., para. 12; 10 Halsbury's Statutes 996.

(d) 26 Halsbury's Statutes 406.

visiting committee under this enactment is limited to fixing a charge not exceeding 14s. in all (i). The local authority's order under sect. 283 (2) does not cover this out-county charge, which therefore is now a matter of contract between the sending and receiving authorities, as in no case is a charge not exceeding 14s. likely to be adequate. [270]

Failing agreement, or where some extraordinary expense has been incurred on behalf of an out-county patient (e.g. a major surgical operation) recourse may be had to sect. 287 of the Act of 1890 (j) which enables the justice by whom a rate-aided patient is sent to a hospital, or any two justices of the county or borough wherein the hospital is situate, or from which the patient has been sent, or any two justices being visitors of the hospital to make an order for payment of reasonable charges for maintenance on the county or county borough to which the patient is chargeable; such order may be retrospective and prospective and is not subject to appeal (k). The expression "expenses of maintenance" is defined in sect. 287 (1) as the reasonable charges of the lodging, maintenance, medicine, clothing and care of the patient.

In connection with reception contracts under sect. 269 of the Act of 1890 it is understood that the law officers some years ago advised that despite the limitation imposed by sect. 283 (3) a visiting committee may charge a larger weekly sum than 14s. for out-county patients. Also a resolution of a visiting committee permitting the reception in a hospital with surplus accommodation of rate-aided patients under sect. 270 may require an undertaking for payment of the expenses enumerated in sect. 287 (1) of the Act, and therefore the limitations of sect. 283 do not apply to cases of this kind. [271]

The provisions of sect. 283 are applied to rate-aided voluntary and rate-aided temporary patients by rule 15 of the Mental Treatment Rules, 1930 (l), but sect. 287 has not been applied by the Act of 1930 or the rules to such patients.

Any excess arising from the statutory out-county charge may be carried by the visiting committee to the building and repair fund and applied to altering, repairing or improving the hospital; but the visiting committee must send annually to the local authority a detailed statement as to the expenditure of this fund (sect. 283 (4)). It would appear that public assistance authorities, who have paid for the maintenance of rate-aided patients at the rates fixed in accordance with the Act of 1890, have no claim to any surplus arising owing to the weekly maintenance rate being in excess of the actual cost, but, except so far as such surplus is applied under statutory authority to alterations, repairs and improvements, the local authority or authorities owning the hospital, appear to be entitled to any surplus (m). *Seemingly*, profits arising from a reception contract made under sect. 269 should be similarly treated.

Under sect. 284 of the Act of 1890, where there is more than one

(i) *Fitch v. Bermondsey Guardians*, [1905] 1 K. B. 524; 83 Digest 249, 1692.

(j) 11 Halsbury's Statutes 115.

(k) There is an informal understanding between the majority of visiting committees and public assistance authorities that application should not be made for orders under s. 287 (1) to operate prior to the appointed day under the L.G.A., 1920, i.e. April 1, 1930.

(l) S.R. & O., 1930, No. 1083; 23 Halsbury's Statutes 182.

(m) *Proctor v. Cheshire County Council* (1892), 56 J. P. 532; 83 Digest 249, 1695.

hospital under the control of a visiting committee, the committee may, subject to any direction given by the local authority, fix uniform maintenance charges for the several hospitals, and apply any surplus on the accounts of one hospital towards meeting any deficit on the accounts of another hospital. This system is applied to rate-aided voluntary and temporary patients by rule 16 of the Mental Treatment Rules, 1930 (*n*). [272]

Payments for private patients are governed by sect. 271 of the Act of 1890 (*o*), and the charges are such as the visiting committee think fit; an annual account must be prepared of the amount by which the charges for private patients exceed the in-county rate-aided patient charges and the surplus, after carrying to the building and repair funds such sums and providing for such outgoings and expenses as the visiting committees think proper, is payable to the local authorities owning the hospital in the proportion in which those authorities have contributed to the provision of the hospital.

The financial arrangements of local authorities are governed by sect. 9 of the Mental Treatment Act, 1930 (*p*), which provides that, outside the administrative County of London, any expenses incurred by a local authority under the Acts of 1890 and 1930 shall be defrayed (1) as expenses for general county purposes in an administrative county which does not include the area or part of the area of another mental hospital authority, *i.e.* a Schedule IV. borough; (2) in other administrative counties, as expenses for special county purposes excluding from contribution any Schedule IV. borough within the county; and (3) in the case of any other local authority, out of the general rate fund.

Where the visiting committee of a local authority deal with their rate-aided mental patients by means of a reception contract, that local authority must pay out of the rate fund so much of the weekly charge for each patient as in the opinion of the visiting committee represents the sum due for accommodation, but not exceeding one-fourth of the entire weekly charge; and this payment is in exoneration, to that extent, of the public assistance authority (1890, sect. 269 (*g*), as modified by the L.G.A., 1929, Sched. X.). As respects a county or county borough, this involves merely an internal adjustment, but in the case of a non-county borough, a payment in part exoneration of the county public assistance expenditure is required. [273]

**Rules and Regulations.**—Under sect. 275 of the Act of 1890 (*q*), a visiting committee must, within twelve months after the completion of a mental hospital, prepare general rules for its government, and submit the rules for the approval of the Board of Control. These rules may be altered or varied with the approval of the Board of Control (sect. 275 (*2*)).

A committee must also make regulations (not inconsistent with the general rules) setting forth the number and description of the officers and servants of the hospital and their respective duties and salaries (sect. 275 (*3*)); the regulations may provide for the reservation of beds in a specified part of the hospital for such cases as may be specified by them, and in such case the hospital may be deemed to be full as

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(*n*) 23 Halsbury's Statutes 182.

(*o*) 11 Halsbury's Statutes 100.

(*p*) 23 Halsbury's Statutes 164.

(*q*) 11 Halsbury's Statutes 110.

respects cases other than those specified, when only reserved beds are available; but the committee may fill reserved beds (*r*) (sect. 275 (4)). The regulations may also provide for (1) the exclusion of persons suffering from infectious or contagious maladies, or coming from a place where such malady is prevalent, and (2) the absence of a patient from the hospital for a period not exceeding four days by permission of the superintendent (sect. 275 (5)). There is no specific provision for amending the regulations, but having regard to their subject-matter, such a power seems to be implied.

The visiting committee must also determine the diet of the patients (sect. 275 (6)).

Sect. 275 is applied to institutions provided or maintained under the Mental Treatment Act, 1930, by sect. 6 (4) of that Act, subject to such modifications and adaptations as may be made by rules of the Board of Control. For the exercise of this power, see rule 49 of the Mental Treatment Rules, 1930 (*s*). [274]

**Officers.**—A visiting committee of a mental hospital are bound under sect. 276 of the Act of 1890 (*t*) to appoint the following officers, viz., a chaplain, medical officer, superintendent, clerk, treasurer, and such other officers and servants as they think fit. They may also appoint a visiting physician or surgeon. Officers so appointed may be removed by the committee (*u*), and their salaries, wages and remuneration are fixed by the committee (sect. 276 (3), (5)). The duty imposed by sect. 276 is applied to institutions provided or maintained under the Mental Treatment Act, 1930, by sect. 6 (4) of that Act, but sect. 276 is modified by rule 50 of the Mental Treatment Rules, 1930 (*w*), which requires a visiting committee to appoint such officers and servants as may be necessary to ensure due administration, and skilled treatment and proper care of the patients. [275]

**Chaplain.**—He must be in priest's orders and licensed by the bishop of the diocese (sect. 276 (1) (a)), who may revoke the licence under sect. 277 (1). The chaplain or his substitute approved by the committee, must perform divine service according to the rites of the Church of England on every Sunday, Christmas Day and Good Friday, and such other Church of England services at such times as the committee direct (sect. 277 (2)). The committee may appoint a minister of any religious persuasion to attend patients of that persuasion (sect. 276 (2)) and a patient not belonging to the Church of England may at his or his friend's request be visited by a minister of his persuasion with the consent and subject to the regulations of the medical officer (sect. 277 (3)). [276]

**Medical Officer.**—The medical officer must reside in the hospital and may not be the clerk or treasurer of the hospital (sect. 276 (1) (b)). The term "medical officer" is defined by sect. 341 as meaning the medical superintendent, or if the superintendent is not a medical practitioner, the resident medical officer. [277]

(*r*) When a mental hospital is full a rate-aided patient may be sent, under reception order, to some institution other than the hospital of the county or borough in which the place from which he is sent is situate (1890, s. 27 (2); 11 Halsbury's Statutes 289).

(*s*) 23 Halsbury's Statutes 190.

(*t*) 11 Halsbury's Statutes 111.

(*u*) Cf. L.G.A., 1933, s. 121; 26 Halsbury's Statutes 370, as to the incorporation in an officer's contract of service of a stipulation as to notice.

(*w*) 23 Halsbury's Statutes 191.

*Medical Superintendent.*—There must be a superintendent of the hospital, or of each division where the hospital is in more than one division, who must be the resident medical officer (or one of them) of the division of which he is appointed superintendent, unless the M. of H. authorises the appointment of some person other than a medical officer as superintendent (sect. 276 (1) (c)). If two or more mental hospitals have been provided, sect. 8 of the Mental Treatment Act, 1930 (a), requires a resident medical superintendent to be appointed for each hospital, and allows the local authority to appoint a supervising medical officer (who may, but need not, be one of the resident medical superintendents) to have general supervision over all the hospitals. In that event, the authority must make rules, defining the duties of the supervising medical officer and his relations to the medical superintendents, to be approved by the Board of Control. [278]

*Clerk.*—The clerk (b) may also be the clerk of the visiting committee (sect. 176) and keeps all books and documents which the visiting committee are required to keep or direct to be kept, and also an account of the receipts and expenditure on account of the hospital; he is required to send an annual abstract of accounts to the M. of H. (sect. 278 (1), (2), (3)). He is also responsible for keeping the statutory books and records and the giving of notices required by Part VIII. of the Mental Treatment Rules, 1930 (c). [279]

*Treasurer.*—This officer must keep accounts of his receipts and expenditure (sect. 278 (6)); his accounts and the accounts of the clerk are to be examined by the visiting committee prior to the month of June in each year and a report made to the local authority or authorities to whom the hospital belongs (sect. 173). As to audit, see Finance (*supra*).

As the foregoing officers are appointed and removable by the visiting committee, it is doubtful whether either the visiting committee or the local authority are required by sect. 119 of L.G.A., 1933 (d), to take security in respect of such of them as have the custody or control of money, but it is very desirable that visiting committees should follow the policy enjoined by this section.

As to superannuation of officers and servants, see title SUPER-ANNUATION. [280]

*Offences.*—Officers and servants of mental hospitals are liable to prosecution in respect of certain statutory offences relating to patients; and by sect. 325 of the Act of 1890 (e) prosecutions may be undertaken (unless otherwise provided by the statute) by (1) the secretary of the Board of Control acting on the Board's order, or (2) the clerk of the visiting committee of a hospital, in relation to an offence committed by a person employed therein. Subject to any special provision of the Act of 1890, proceedings can only be taken by order of the Board of Control, or of the visitors having jurisdiction where the offence was committed, or with the consent of the Attorney-General or Solicitor-

(a) 23 Statutes 104.

(b) No statutory professional qualification is prescribed in respect of the clerk, but normally recognition is given by visiting committees to the diploma of the Incorporated Association of Clerks and Stewards of Mental Hospitals.

(c) 23 Halsbury's Statutes 193.

(d) 26 Halsbury's Statutes 360.

(e) 11 Halsbury's Statutes 125.

General (*ibid*). By sect. 326 penalties are recoverable summarily and are to be applied as prescribed by the section.

Some of the provisions as to offences are applied to voluntary and temporary patients by rules 29—33, 42 of the Mental Treatment Rules, 1930 (*f*). [281]

The principal statutory offences are :

Lunacy Act, 1890.	Nature of Offence.	Penalty.
Sect. 40.	Improper use of mechanical restraint.	Misdemeanor. Fine and/or imprisonment.
Sect. 41.	Failing to forward unopened letters addressed by patients to the Lord Chancellor, etc.	Fine not exceeding £20.
Sect. 76.	Unlawful detention of patient after discharge by Board of Control.	Misdemeanor. Fine and/or imprisonment.
Sect. 315.	Receiving or detaining a mental patient or alleged mental patient except under the provisions of the Lunacy and Mental Treatment Acts, 1890-1930.	Fine not exceeding £50.
Sect. 317.	Wilful misstatement of material fact in petitions, etc., or in medical or other certificates or reports of bodily or mental conditions ( <i>g</i> ).	Misdemeanor. Fine and/or imprisonment.
Sect. 318.	Knowingly making false entries in statutory books or returns.	Misdemeanor. Fine and/or imprisonment.
Sect. 319.	Superintendent omitting to notify coroner of death of a patient.	Misdemeanor. Fine and/or imprisonment.
Sect. 322.	Ill-treating or wilfully neglecting a patient.	Misdemeanor. Fine and/or imprisonment on conviction on indictment. Fine not exceeding £50 and not less than £2 on summary conviction.
Sect. 323.	Permitting or conniving at escape of a patient or secreting a patient.	Fine not exceeding £20 nor less than £2 on summary conviction.
Sect. 324.	Having or attempting to have carnal knowledge of a female patient (consent by the female is no defence).	Misdemeanor. Imprisonment not exceeding two years on conviction on indictment.
Mental Treatment Act, 1930.	Nature of Offence.	Penalty.
Sects. 2 (5), 5 (8).	Failing to give notice of reception, death or departure of voluntary patient or temporary patient.	Daily penalty not exceeding £5.

[282]

Protection against proceedings by or on behalf of patients is given to (*inter alia*) mental hospital officers and staff, by sect. 16 of the Mental Treatment Act, 1930 (*h*), which provides that a person presenting a petition for a reception order, etc., or doing any act in pursuance

(*f*) 23 Halsbury's Statutes 185, 186, 189.

(*g*) Prosecution can only be undertaken by order of the Board of Control or by direction of the Attorney-General or Director of Public Prosecutions; see s. 317 (3).

(*h*) 23 Halsbury's Statutes 169.

of the Lunacy and Mental Treatment Acts, 1890—1930, is not liable to any civil or criminal proceedings, whether on the ground of want of jurisdiction or on any other ground, unless he has acted in bad faith or without reasonable care; no such proceedings are to be taken without the leave of the High Court, which shall not be given unless substantial ground for the allegation of bad faith or want of reasonable care exists. Notice of the application for leave must be given to the person against whom proceedings are intended, and he is entitled to be heard against the application. Where an application for leave is granted, and proceedings are commenced within four weeks thereafter, the proceedings are deemed to have been commenced, for the purposes of the Public Authorities Protection Act, 1893 (*i*), on the date when notice of the application for leave was given to the proposed defendant. [283]

London.—Sect. 7 of the L.C.C. (Parks, etc.) Act, 1915 (*k*), provides that, notwithstanding sect. 276 of the Lunacy Act, 1890 (*l*), the medical superintendent of the Maudsley Hospital (see title MENTAL DISORDER AND MENTAL DEFICIENCY) shall not be required to reside therein so long as arrangements approved by the Board of Control are made for his residence elsewhere. [284]

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- (i) 13 Halsbury's Statutes 455.  
 (k) 5 & 6 Geo. 5, c. lxxvi.  
 (l) 11 Halsbury's Statutes 111.

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## MENTAL TREATMENT

See MENTAL DISORDER AND MENTAL DEFICIENCY.

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## MERCHANDISE MARKS

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See also title: IMPORTED FOOD.

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False Trade Description of Goods.—Enforcement of the Merchandise Marks Act, 1887 (*a*), is not among the duties laid on local authorities, but their officers find it useful and convenient on occasion to supplement, through sect. 2 of that Act, their powers of protecting the public



under other statutes which they enforce. Three typical instances may be given of cases of the kind. (1) An article of food may be on sale by retail under a false description, but it may be impossible to apply the Food and Drugs (Adulteration) Act, 1928 (*b*), because the public analyst may be unable to certify that the article is not genuine. The false trade description may relate, for example, to the country of origin, the method of manufacture or the material of which the food is composed. (2) The sale of goods, other than coal or food, to which a false description of weight or measure is applied, is not an offence under the Weights and Measures Acts but may be under the Merchandise Marks Act. Coke and petrol are cases in point. (3) Foreign pears, oranges and other articles to which no marking order under the Merchandise Marks Act, 1926 (*c*), applies, may be sold or on sale with false descriptions of origin, *e.g.* the word "Empire," an offence being thus committed against the Act of 1887. [285]

In all such cases, the authorised officer of any local authority could institute a prosecution under sect. 2 of the Act of 1887 by virtue of sects. 276 and 277 of the L.G.A., 1933 (*d*), or alternatively as a common informer; and the former course is not unusual, some local authorities having specially empowered their officers in that behalf. It must be remembered that an offence is not committed unless the false trade description is written or printed—an oral misdescription not being an offence; also, that offences may be indictable, and an accused person must be informed at petty sessions of his right to go before a jury.

If a local authority consider, in connection with the sale of any article under some trade description, that the general interests of the country or of a section of the community are affected it is open to them to approach the Board of Trade—or, in a matter relating to agricultural or horticultural produce, the M. of A. & F.—with a view to a prosecution being undertaken by the appropriate department, as contemplated by the Merchandise Marks Acts of 1891 (*e*) and 1894 (*f*) respectively. In practice, the departments rarely institute such prosecutions and are hardly ever requested to do so by local authorities. The departments have no exclusive right to institute proceedings. The two departments have made regulations (*g*) with respect to such applications.

The regulations empower the departments, before consenting to undertake a prosecution, in a case which they consider appropriate for them to take, to require an applicant to obtain such further evidence or information as they may deem necessary and to give security for costs on such terms as the departments think proper. The departments may decline to undertake a prosecution if they think that there is no reasonable prospect of obtaining a conviction or that the pro-

(*b*) 8 Halsbury's Statutes 884.

(*c*) 19 Halsbury's Statutes 898. See title IMPORTED FOOD.

(*d*) 26 Halsbury's Statutes 452. The sections do not apply in London, but similar powers are available in s. 2 of the Borough Funds Act, 1872; 10 Halsbury's Statutes 559, applied to the L.C.C. by s. 15 of the L.G.A., 1888; 10 Halsbury's Statutes 698, and to metropolitan borough councils by s. 6 (*h*) of the London Government Act, 1899; 11 Halsbury's Statutes 1229, and in s. 284 of the P.H. (London) Act, 1936.

(*e*) 19 Halsbury's Statutes 841.

(*f*) *Ibid.*, 842.

(*g*) S.R. & O., 1913, printed in S.R. & O., for 1920, p. 1436; and S.R. & O., 1914, No. 49.

seuection would be better or more properly conducted under some other Act of Parliament. [286]

**Special Defences.**—"No intent to defraud" is a good answer to the charge of applying a false trade description to goods (*h*). A person prosecuted for selling, or exposing, or offering for sale, goods to which a false trade description is applied, is entitled to acquittal if he prove : (1) due diligence and absence of cause to suspect the genuineness of the description, provided that he gives the prosecutor on demand all the information in his power with regard to the person from whom he obtained the goods, or (2) that he otherwise acted innocently. "Acting innocently" means acting without intent to do the forbidden act, coupled with proper precautions to avoid an offence (*i*). An employer is ordinarily liable under the Act of 1887 for the actions of his servants, but may lay an information against a person whom he alleges to be the actual offender, and is exempt from penalty if he satisfies the requirements of the statute (*k*). [287]

(*h*) S. 2 (1) ; 10 Statutes 833.

(*i*) *Allard v. Selfridge & Co., Ltd.*, [1925] 1 K. B. 129 ; 43 Digest 240, 850.

(*k*) S. 6, Merchandise Marks Act, 1926 ; 19 Halsbury's Statutes 908. See also *A. Walking, Ltd. v. Robinson* (1930), 99 L. J. K. B. 171 ; Digest Supp.

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## METROPOLIS

See LONDON.

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## METROPOLITAN BOROUGH

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LONDON ;

LONDON BUILDING ;

LONDON, RATING IN ;

LONDON ROADS AND TRAFFIC ;

METROPOLITAN BOROUGH'S STANDING  
JOINT COMMITTEE.

**Introduction.**—Prior to 1855, local government in the metropolis was in a state of chaos, and in many districts where the poor were herded together, there was no sanitary authority. There were, however, many *ad hoc* bodies such as paving commissioners, lighting commissioners, turnpike boards, etc., which appear for practical purposes to have been almost entirely self-elected, and in cases where, in theory, they were elected by the ratepayers, the process of election

was well besmirched with corrupt practiees. The powers of these bodies were derived from local Acts of Parliament which appeared to aim not at any systematic administration, but at establishing and maintaining the complete independence of the bodies. At the time of the introduction of the Bill which became the Metropolis Management Act, 1855, there were some 300 of these bodies.

During the first half of the nineteenth century, there was, in fact, no attempt at orderly local government in the metropolis, and although in 1848 an Act was passed under which the various sewer commissioners were amalgamated and became the Metropolitan Commission of Sewers, this was only a temporary expedient. Nevertheless, the Commission did much useful work. They made a very determined attack on the cesspool system and substituted therefor a system of drainage, but in the poorer districts houses were still built without regard to sanitation or ventilation. The operations of the commissioners, however, produced other evils. Although cesspools were discontinued, no proper means were taken for their removal with the result that many were left to exhaust themselves or were actually built upon, and these became centres of pollution. Again, the sewage was discharged in its crude condition into the River Thames, and such discharge took place at low-water only, by reason of the low level of the sewers. From time to time, appalling floods took place in the houses and the river itself became offensive. The water supply of several companies was obtained from the river between Hammersmith and Waterloo Bridges, and there was no supervision over the supplies which they gave to the inhabitants. It is not surprising, therefore, that during epidemics of cholera, the metropolis suffered to a much greater extent than the rest of the country, which was already feeling the benefit of the municipal reform commenced in 1835.

The first great charter of the metropolis was the Metropolis Management Act of 1855 under which the administrative vestries and district boards were brought into being.

This was virtually the beginning of administration in the metropolis, and the vestries and boards set up under the Act of 1855 carried on the system of local government in London, excluding the City, up to the time when the London Government Act, 1899, came into operation. [288]

**The Establishment of the Metropolitan Borough.**—The metropolitan borough was established by Order in Council under the London Government Act, 1899 (*a*), by sect. 1 of which it was provided that "the whole of the administrative county of London, exclusive of the City of London, shall be divided into metropolitan boroughs . . . and for that purpose it shall be lawful for Her Majesty by Order in Council . . . to form each of the areas mentioned in the First Schedule to this Act into a separate borough, subject, nevertheless, to such alteration of area as may be required to give effect to the provisions of this Act, and subject also to such adjustment of boundaries as may appear to Her Majesty in Council expedient for simplification or convenience of administration, and to establish and incorporate a council for each of the boroughs so formed" (*b*). [289]

(*a*) 11 Halsbury's Statutes 1225 *et seq.*

(*b*) The twenty-eight councils were established and incorporated by a series of Orders in Council which are registered and printed as S.R. & O., 1900, Nos. 380 to 407, inclusive.

**Constitution.**—The council of a metropolitan borough consists of and is known by the name of the Mayor, Aldermen and Councillors of the Metropolitan Borough of. . . . . (c). The council has perpetual succession and a common seal, and may, for the purposes of its powers and duties, and subject to the statutory provisions relating thereto, hold land without licence in mortmain (d). [290]

**The Mayor.**—The mayor must be a fit person elected by the council from among the aldermen (including outgoing aldermen) or councillors, or persons qualified to be such. His office is annual, but he may be re-elected. He continues in office until a successor has been appointed; he may receive remuneration (e); he may call a meeting of the council at any time; he presides at every meeting of the council (f); and he is a justice of the peace for the County of London during his term of office (g). The provision that the mayor of a provincial borough shall continue to act as a justice of the peace for twelve months after he ceases to be mayor, does not apply in the metropolis. The mayor is elected ordinarily on November 9, or if that day is a Sunday, then on the following day (h). Outgoing aldermen may not, as aldermen, vote at the election of mayor (i). Subject to such disqualifications, the chairman of the meeting at which the election takes place is entitled to vote, and in the case of an equality of votes, to give a second or casting vote (k). [291]

**Deputy Mayor.**—The borough council may appoint a member thereof to be deputy mayor to hold office during the term of office of the mayor and subject to any rules made by the borough council anything authorised or required to be done by, to or before the mayor may, notwithstanding any other enactment be done by, to or before the deputy mayor; provided that the deputy mayor shall not, unless he is a justice, act as a justice or in any judicial capacity (l). [292]

**Aldermen.**—The aldermen must be fit persons elected by the council from among the councillors or persons qualified as councillors (m). The number of aldermen must be one-sixth of the number of councillors and they are elected in the same way and serve for the same period as aldermen in the provinces (n). [293]

(c) Kensington has "Royal" in lieu of "Metropolitan" in its title, and Westminster is a City.

(d) See (b).

(e) London Government Act, 1899, s. 2 (4); 11 Halsbury's Statutes 1226; Municipal Corpn. Act, 1882, s. 15; 10 Halsbury's Statutes 581; L.G.A., 1888, ss. 2, 75; 10 Halsbury's Statutes 686, 746 *et seq.*

(f) London Government Act, 1899, s. 2 (4); 11 Halsbury's Statutes 1226; Municipal Corpn. Act, 1882, Rules 3, 9, Sched. II.; 10 Halsbury's Statutes 660; L.G.A., 1888, ss. 2, 75; 10 Halsbury's Statutes 686, 746 *et seq.*

(g) London Government Act, 1899, s. 24; 11 Halsbury's Statutes 1238.

(h) *Ibid.*, s. 3 (3); *ibid.*, 1227.

(i) *Ibid.*, s. 2 (4); L.G.A., 1888, ss. 2, 75 (10); 10 Halsbury's Statutes 686, 687, 747.

(k) London Government Act, 1899, s. 2 (4); 11 Halsbury's Statutes 1226; L.G.A., 1888, ss. 2, 75; 10 Halsbury's Statutes 686—688, 746; Municipal Corpn. Act, 1882, s. 61; *ibid.*, 595.

(l) L.C.C. (General Powers) Act, 1920, s. 62; 11 Halsbury's Statutes 1425.

(m) London Government Act, 1899, s. 2 (4); *ibid.*, 1226; L.G.A., 1888, s. 2; 10 Halsbury's Statutes 686; Municipal Corpn. Act, 1882, s. 14 (1), (3); *ibid.*, 581.

(n) London Government Act, 1899, s. 2 (3), (4); 11 Halsbury's Statutes 1226.

**Borough Councillors.**—The number of councillors is fixed for each borough by Order in Council, but may not exceed sixty. The number elected for each ward must be divisible by three (*o*). The persons qualified to be councillors are those who, not being infants or aliens, are local government electors, residents of twelve months' standing, and owners of property within the borough (*p*). Persons may become disqualified for election or for office by reason of holding a paid office under the council, bankruptcy, conviction for a criminal offence, interest in contracts (*q*), receipt of poor relief (*r*), surcharge by a district auditor (*s*), or by reason of corrupt or illegal practices (*t*).

Acceptance of office and resignation must be in writing (*u*). Failure to attend meetings for six months involves loss of office, unless the failure was due to some reason approved by the council (*a*), and members may become disqualified by interest in contracts with the council (*b*).

The ordinary day of election is November 1 in every third year unless that day is a Sunday, when the election is held on the following day (*c*).

Save that the whole of the members for a ward are elected at the same time, the procedure is comparable with the procedure in provincial boroughs (*d*).

The procedure for the election is regulated by The Metropolitan Borough Councillors' Election Rules, 1931, 1933 and 1934. Casual vacancies are filled in the same manner as ordinary elections. If a councillor is returned for more than one ward, he must on or before the first subsequent meeting of the council signify to the town clerk, in writing, his decision as to the ward he will represent. Failing this, the council must make the decision (*e*). [294]

**Meetings of Borough Councils.**—The borough council may meet upon such days (except Sundays) and at such hours as the council from time to time determine. Any business which by any Act of Parliament or custom should be done on a certain day, may be done at a meeting, duly convened for the purpose, and held within seven days next before or after such day (*f*). The council must meet on

(*o*) London Government Act, 1899, s. 2 (2), (3); 11 Halsbury's Statutes 1226.

(*p*) *Ibid.*, s. 2 (5); L.G.A., 1894, ss. 31 (1), 23 (2), as amended by s. 42 and Sched. VI. (2) of the Representation of the People Act, 1918 (10 Halsbury's Statutes 708, 702 and 7 Halsbury's Statutes 572, 588); Representation of the People Act, 1918, ss. 10, 41 (2); *ibid.*, 555, 570.

(*q*) London Government Act, 1899, s. 2 (5); 11 Halsbury's Statutes 1226; L.G.A., 1894, ss. 31 (1), 46 (1); 10 Halsbury's Statutes 798, 804.

(*r*) London Government Act, 1899, s. 2 (5); 11 Halsbury's Statutes 1226; L.G.A., 1894, ss. 31 (1), 46 (1); 10 Halsbury's Statutes 798, 804, as modified by the L.G.A., 1929, ss. 10 (1), 18; *ibid.*, 890, 894.

(*s*) Audit (Local Authorities) Act, 1927, s. 1 (1); *ibid.*, 879.

(*t*) London Government Act, 1899, s. 2 (5); 11 Halsbury's Statutes 1226; L.G.A., 1894, s. 48; 10 Halsbury's Statutes 807; Municipal Elections (Corrupt and Illegal Practices) Act, 1884, s. 2; 7 Halsbury's Statutes 511; Corrupt and Illegal Practices Prevention Act, 1883, s. 4; *ibid.*, 467.

(*u*) L.C.C. (General Powers) Act, 1934, ss. 31, 32; 27 Halsbury's Statutes 418, 419.

(*a*) *Ibid.*, s. 35; *ibid.*, 420.

(*b*) London Government Act, 1899, s. 2 (5); 11 Halsbury's Statutes 1226; L.G.A., 1894, s. 46 (1); 10 Halsbury's Statutes 805.

(*c*) London Government Act, 1899, s. 3 (2); 11 Halsbury's Statutes 1227.

(*d*) *Ibid.*, s. 2 (5); L.G.A., 1894, s. 48; 10 Halsbury's Statutes 807.

(*e*) Metropolitan Management Amendment Act, 1892, s. 39; 11 Halsbury's Statutes 974.

(*f*) *Ibid.*, s. 37; *ibid.*, 973; L.G.A., 1894, s. 31 (3); 10 Halsbury's Statutes 798.

November 9, or, if that day is a Sunday, then on November 10, for the election of mayor and, in every third year, of aldermen (*g*), and during November or December each year for the purpose of appointing an assessment committee (*h*).

A meeting may be convened by notice, signed by the town clerk, and sent by post or otherwise to each member three days before the date appointed, and by affixing a copy on or near the door of any building where the meeting is to be held (*i*). Fourteen days' notice is required, where the meeting is to consider a resolution for transferring drainage powers to the county council (*k*), and ten days' notice, by advertisement, of a meeting to authorise proceedings in Parliament (*l*).

One-third of the whole number of the council forms a quorum (*m*). At every meeting of the council the mayor, if present, must be chairman (*n*). If he and the deputy-mayor are absent, the members present must elect a chairman for the occasion before proceeding to other business (*o*).

Any question is decided by the votes of the majority of the members present and voting, and the council may act notwithstanding any vacancies therein (*p*). Special majorities are required in certain cases; thus, an absolute majority of the council must be obtained before expenses are incurred in connection with bills in Parliament (*q*), and two-thirds of the council must be present to transfer drainage powers to the county council (*r*). A council may regulate the proceedings at meetings by bye-laws or standing orders (*s*).

A resolution or other act of a borough council cannot be revoked or altered at a subsequent meeting, unless such subsequent meeting is specially convened for the purpose (*t*); nor unless such revocation or alteration is determined upon by a majority consisting of two-thirds of the members present at such subsequent meeting if the number of members present at such subsequent meeting is not greater by one-fifth than the number present when such resolution was made or such act was done. If, however, the number of members present at such subsequent meeting is greater by one-fifth, then such revocation or alteration may be determined upon by a mere majority (*u*). This

(*g*) London Government Act, 1890, s. 3 (8); 11 Halsbury's Statutes 1227.

(*h*) L.G.A., 1929, s. 18 (h); 10 Halsbury's Statutes 896.

(*i*) Metropolis Management Amendment Act, 1856, s. 9; 11 Halsbury's Statutes 960.

(*j*) P.H. (London) Act, 1936, s. 16.

(*k*) Borough Funds Act, 1872, s. 4; 10 Halsbury's Statutes 560, as applied by London Government Act, 1890, s. 6 (6); 11 Halsbury's Statutes 1229.

(*m*) London Government Act, 1890, s. 2 (6); *ibid.*, 1226.

(*n*) *Ibid.*, s. 2 (4); L.G.A., 1888, s. 75; 10 Halsbury's Statutes 746; Municipal Corporations Act, 1882, Sched. II., r. 9; *ibid.*, 600. As to the deputy-mayor, see *ante*, p. 133.

(*o*) Metropolis Management Act, 1855, s. 30; 11 Halsbury's Statutes 890.

(*p*) London Government Act, 1890, s. 4; *ibid.*, 1227; Metropolis Management Act, 1855, s. 28; *ibid.*, 890; L.C.C. (General Powers) Act, 1928, s. 31; *ibid.*, 1412.

(*q*) Borough Funds Act, 1872, s. 4; 10 Halsbury's Statutes 560, as applied by London Government Act, 1890, s. 6 (6); 11 Halsbury's Statutes 1229.

(*r*) P.H. (London) Act, 1936, s. 16.

(*s*) Metropolis Management Act, 1855, s. 202; 11 Halsbury's Statutes 984, as amended by L.C.C. (General Powers) Act, 1934, s. 30 and Sched.; 27 Halsbury's Statutes 418, 496.

(*t*) As to convening a meeting, see *supra*.

(*u*) Metropolis Management Act, 1855, s. 57; 11 Halsbury's Statutes 891.

provision does not apply to the revocation or variation of standing orders of a borough council (a). [295]

Minutes of all proceedings of a borough council with the names of the members who attend each meeting must be made in books to be provided and kept for the purpose, and must be signed by the members present or any two of them. Until the contrary is proved, entries purporting to be so signed shall be received as evidence without proof of any meeting of the council having been held, or of the presence at any such meeting of the persons named in any such entry or of such members being members of the council (b); or of the signature of any person by whom any such entry purports to be signed (c).

Every borough council must provide and enter in books true accounts of all sums of money received and paid by it, or under its authority, and of all liabilities incurred by it, and copies of all contracts entered into by such council (d).

All minute books and account books must be open at all reasonable times to the examination of every member of the council, property owners, ratepayers and creditors, and copies of, or extracts from, such books may be taken without fee (e).

A borough council must, not later than September 30 in each year, publish a report for the year ending March 31 containing such information as the Minister of Health may prescribe. The report must be sent to the Minister and the county council and shall be supplied to any person applying for the same on payment of a sum not exceeding one shilling (f). A borough council must, once a year at least, prepare a list of the parochial property under its control and such list shall be open to the inspection of ratepayers at the same time with the accounts when audited (g). [296]

**Committees.**—A borough council has a general power to appoint committees for any such general or special purpose as would in its opinion be better regulated and managed by means of a committee (h) and may make, alter and repeal bye-laws and may make, vary and revoke standing orders for regulating the business and proceedings of committees (i). The borough council may also, with or without restrictions, delegate to its committees any functions other than functions which are required to stand referred to another committee (k). A committee cannot raise money by loan or by rate, or spend any money beyond the sum allowed by the council (l).

(a) L.C.C. (General Powers) Act, 1934, s. 30 (2); 27 Halsbury's Statutes 418.

(b) See *Hummings v. Williamson* (1883), 11 Q. B. D. 533, C. A.; 34 Digest 578, 22.

(c) Metropolis Management Act, 1855, s. 60; 11 Halsbury's Statutes 892.

(d) *Ibid.*, s. 60.

(e) *Ibid.*, s. 61; 11 Halsbury's Statutes 892.

(f) L.C.C. (General Powers) Act, 1920, s. 61; *ibid.*, 1425. The report of the medical officer of health must be appended to this report; P.H. (London) Act, 1936, s. 8 (6).

(g) Metropolis Management Act, 1855, s. 199; 11 Halsbury's Statutes 933.

(h) L.C.C. (General Powers) Act, 1934, s. 27 (1); 27 Halsbury's Statutes 416. The P.H. (London) Act, 1936, s. 4, empowers a committee appointed by a sanitary authority for the purposes of the Act, subject to the terms of their appointment, to serve and receive notices, and to take proceedings, and empowers any officer of the sanitary authority to make complaints and take proceedings on their behalf.

(i) Metropolis Management Act, 1855, s. 202; 11 Halsbury's Statutes 934, as amended by L.C.C. (General Powers) Act, 1934, s. 30 and Sched.; 27 Halsbury's Statutes 486, and further amended by P.H. (London) Act, 1936, Sched. VII.

(k) L.C.C. (General Powers) Act, 1934, s. 27 (4); 27 Halsbury's Statutes 416.

(l) *Ibid.*, s. 28 (3).

A committee appointed for any of the purposes of the Public Libraries Acts, 1892 to 1919, may consist partly of persons who are not members of the borough council and a committee appointed for any of the purposes of the Housing Acts may consist partly of persons who are not members of the council, provided a majority of the members of the committee are members of the council (*m*).

The council may appoint, as members of the committee appointed under sect. 252 (3) of the P.H. (London) Act, 1936, persons specially qualified by training or experience, in subjects relating to health and maternity, who are not members of the council, but not less than two-thirds of the members of the committee must be members of the council, and at least two members of the committee must be women.

Every borough council must, unless exempted by the Minister of Agriculture and Fisheries, after consultation with the Minister of Health, establish an allotments committee which shall comprise persons other than members of the council, being persons experienced in the management and cultivation of allotment gardens, and representative of the interests of occupiers of allotment gardens, but the number of such representative members shall be not more than one-third of the total number of the members of the committee, or be less than two or one-fifth of such total number, whichever be the larger number (*n*). [297]

A borough council must appoint a finance committee consisting of members of the council for regulating and controlling the finance of the council. The number of members and their term of office must be fixed and may be varied from time to time by the council. An order for the payment of a sum cannot be made by the council except in pursuance of a resolution of the council passed on the recommendation of the finance committee, and no costs, debt or liability exceeding £50 must be incurred by the council except upon a resolution of the council passed on an estimate submitted by the finance committee. The notice of the meeting at which any resolution for the payment of any sum by the borough council (otherwise than for ordinary periodical payments), or any resolution for incurring any costs, debt or liability exceeding £50 will be proposed, must state the amount of the said sum, costs, debt or liability, and the purpose for which they are to be paid or incurred. These provisions do not apply to payments made in pursuance of a precept from another authority (*o*).

Members of committees cease their membership on ceasing to be members of the council, and the same disabilities and disqualifications and proceedings in relation thereto apply to membership of committees as to membership of the council (*p*). The person presiding at a meeting of a committee is entitled to give a second or casting vote (*q*).

Every metropolitan borough is an assessment area, and for each area there is an assessment committee to discharge, as regards valuation lists for each parish within the area, the same functions as assessment committees had immediately before April 1, 1930. The assessment

(*m*) L.C.C. (General Powers) Act, 1934, s. 27 (1); 27 Halsbury's Statutes 416.

(*n*) Allotments Act, 1922, s. 14 (1), (2); 1 Halsbury's Statutes 312.

(*o*) L.C.C. (General Powers) Act, 1934, ss. 20, 28 (1); 27 Halsbury's Statutes 412, 417; London Government Act, 1899, s. 8 (3), so far as not repealed; 11 Halsbury's Statutes 1230.

(*p*) L.C.C. (General Powers) Act, 1934, ss. 25, 28; 27 Halsbury's Statutes 415, 417.

(*q*) *Ibid.*, s. 30.



committee is appointed by the borough council from members of the borough council, save that one person is appointed by the L.C.C. The members of the committee are appointed every year in November or December and hold office until their successors are appointed. No member of the rating committee may be a member of the assessment committee, and the L.C.C. cannot appoint as their representative an officer of that council. The quorum is fixed by the committee, but must not be less than three. The town clerk is the clerk to the committee (r). [298]

**Finance.**—Metropolitan local finance is dealt with under the title of BOROUGH ACCOUNTS, and rating under the title LONDON, RATING IN.

**Officers.**—A metropolitan borough council must appoint and may remove at pleasure such officers and servants as may be necessary, and may fix their salaries and wages (s), and may make bye-laws for regulating their appointment, removal, duties, conduct and remuneration (t).

Before any officer or servant enters upon any office or employment under the Metropolis Management Acts by reason whereof he may be entrusted with the custody or control of money, he must give such security as the council may think fit, and all such officers and servants must furnish accounts and deliver up documents when required (u). A penalty is provided in the case of officers and servants who are interested in contracts with the council or who accept fees. No officer or servant of the council may be interested in any contract made with the council, or under colour of his office accept any fee or reward other than his proper salary and allowances (a).

The clerk to a metropolitan borough council is styled "the town clerk" (b).

No person holding the office of treasurer under the council nor any person in his service may hold or in any manner assist in the office of town clerk, and neither the town clerk nor any person in his employ may hold or in any manner assist in the office of borough treasurer (c). [299]

In the case of the illness or the absence of the town clerk, the borough council may appoint a deputy town clerk to hold office during its pleasure, and he may do all things required or authorised by law to be done by or to the town clerk, and no defect in the appointment of a deputy shall invalidate his acts (d).

Every metropolitan borough council, as sanitary authority, must appoint one or more medical officers of health, but the same person may, with the consent of the Minister of Health, be appointed as M.O.H. for two or more districts. Every M.O.H. must be a legally qualified medical practitioner and be registered in the medical register as the holder of a diploma in sanitary science, public health or state medicine. A M.O.H. must generally reside within a mile of his district. He may

(r) L.G.A., 1929, s. 18 (h); 10 Halsbury's Statutes 895.

(s) Metropolis Management Act, 1855, s. 62; 11 Halsbury's Statutes 893.

(t) *Ibid.*, s. 202.

(u) *Ibid.*, s. 65.

(a) *Ibid.*, s. 64.

(b) London Government Act, 1899, s. 4 (1); 11 Halsbury's Statutes 1227.

(c) Metropolis Management Act, 1855, s. 63; *ibid.*, 893.

(d) London Government Act, 1899, s. 25; *ibid.*, 1238.

exercise any of the powers of a sanitary inspector and his annual report must be appended to the council's report (e).

Every borough council, as sanitary authority, must appoint an adequate number of persons to be sanitary inspectors, and the Minister of Health, on a representation made by the county council and after local inquiry, may require the sanitary authority to appoint additional inspectors if deemed necessary. Every sanitary inspector must hold a certificate issued by an examining body approved by the Minister. The sanitary inspector must report nuisances to the authority who must keep a book for the entry of complaints received, and inspectors must report on complaints. Such report and orders made by the authority thereon must be entered in the book and open to inspection. It is the duty of inspectors subject to directions of the sanitary authority to take proceedings in respect of offences (f). [300]

The borough council, when occasion requires, may with the consent of the Minister, make temporary arrangements with regard to the discharge of the duties of the M.O.H. and sanitary inspectors (g).

The duties of medical officers and sanitary inspectors are set out in the Sanitary Officers' Order, 1926.

Medical officers and chief sanitary inspectors may not be appointed for a limited period only, and are not removable from office except by, or with the consent of, the Minister of Health (h).

A borough council, as sanitary authority, may appoint suitable women known as health visitors for the purpose of giving persons advice as to the proper care of young children, and the promotion of cleanliness, and the Minister of Health may make regulations prescribing qualifications, duties and salaries of health visitors (i). (See title MATERNITY AND CHILD WELFARE.)

The work of administration differs in different boroughs, but in all the town clerk is the chief administrative officer of the council. Other chief officers are the borough treasurer, the borough engineer and surveyor, and the M.O.H., whilst in some boroughs there are additional chief officers, e.g., electrical engineer, librarian, etc.

Certain statutes, e.g. Food and Drugs (Adulteration) Act, 1928 (k), confer further powers on sanitary inspectors, whilst under the L.G.A., 1929, registration and vaccination officers were transferred to the borough councils when the boards of guardians ceased to exist (l). [301]

**General Powers and Functions.**—The borough councils are the sanitary and highway authorities for their respective boroughs, and whilst their functions and powers may be classified in various ways, it is felt that an alphabetical list will afford the best means of reference, and accordingly no other classification has been attempted. The sub-titles in the list are not intended to be exhaustive, but most of the general powers and functions are included in the titles. For greater detail relating to any particular item, reference should be made to the appropriate titles in this work.

**Advertisements.**—Bye-laws (L.C.C.) as to hoardings, enforcement of (Advertisements Regulation Act, 1907, sect. 8; 13 Halsbury's Statutes

(e) P.H. (London) Act, 1936, s. 8.

(f) *Ibid.*, s. 9.

(g) *Ibid.*, s. 10.

(h) *Ibid.*, s. 11 (1).

(i) *Ibid.*, s. 13 (1).

(k) S. 16; 8 Halsbury's Statutes 894.

(l) Ss. 18 (g), 27; 10 Halsbury's Statutes 895, 902. See also Transfer of Powers (London) Order, 1933, made under *ibid.*, s. 64.

910); sky signs, removal of (London Building Act, 1930, sect. 150; 23 Halsbury's Statutes 295).

*Agricultural Produce.*—Grading and marking (Agricultural Produce (Grading and Marking) Act, 1928, sect. 5; 1 Halsbury's Statutes 168).

*Alkali, etc., Works.*—Inspectors (Alkali, etc., Works Regulation Act, 1906, sect. 14; 13 Halsbury's Statutes 900); nuisance from, complaint as to (*ibid.*, sect. 22).

*Allotment Gardens.*—Provision of (Small Holdings and Allotments Act, 1908, sect. 25, as applied by Land Settlement (Facilities) Act, 1919, sect. 24; 1 Halsbury's Statutes 259, 295); seeds, implements, etc., purchase and sale of (Land Settlement (Facilities) Act, 1919, sect. 21; 1 Halsbury's Statutes 294).

*Ambulance Service.*—Arrangements with L.C.C. (P.H. (London) Act, 1936, sect. 231); infectious diseases, for (*ibid.*, sects. 231, 232).

*Animals and Birds.*—Nuisances from (P.H. (London) Act, 1936, sects. 118, 121); restrictions on keeping (*ibid.*, sects. 119, 120).

*Ashpits.*—Regulation of (P.H. (London) Act, 1936; sects. 112, 197).

*Balchouses.*—Sanitary provisions, enforcement of (P.H. (London) Act, 1936, sect. 180; Factory and Workshop Act, 1901, sects. 97—102 and 153; 8 Halsbury's Statutes 566 *et seq.*, 597).

*Barbed Wire.*—Removal of, where nuisance to highway (Barbed Wire Act, 1893, s. 3; 9 Halsbury's Statutes 207).

*Baths and Washhouses.*—Provision and maintenance of (P.H. (London) Act, 1936, sects. 167 *et seq.*); use of, as hall (*ibid.*, sect. 172).

*Births.*—Notification of (P.H. (London) Act, 1936, sect. 255); registration of (Births and Deaths Registration Acts, 1886—1929; 15 Halsbury's Statutes 700 *et seq.*).

*Bread.*—The Bread Acts are virtually obsolete.

*Bridges.*—Canal, making and widening (Metropolis Management Amendment Act, 1862, sect. 72; 11 Halsbury's Statutes 984); construction and improvement (Unemployment Relief Works Act, 1920, sect. 1; 20 Halsbury's Statutes 652); maintenance, improvement and reconstruction (Bridges Act, 1929, sects. 2 *et seq.*; 9 Halsbury's Statutes 268).

*Buildings* (see also "London Building Acts").—Demolition of, bye-laws as to, enforcement of (P.H. (London) Act, 1936, sect. 85).

*Burial Grounds.*—Cremation, see "Cremation"; disused, acquisition of (Open Spaces Act, 1906, sect. 9; 12 Halsbury's Statutes 387); buildings on, prohibition of, except for certain purposes (Disused Burial Grounds Act, 1884, sect. 3; 2 Halsbury's Statutes 279; Transfer of Powers (London) Order, 1932); management of (Open Spaces Act, 1906, sects. 10, 11; 12 Halsbury's Statutes 387); transfer of, to local authority (*ibid.*, sect. 5; 12 Halsbury's Statutes 385); management, regulation and control of (Burial Act, 1852, sect. 38; 2 Halsbury's Statutes 203); provision of (*ibid.*, sect. 25; 2 Halsbury's Statutes 198).

*Canal Boats.*—Infectious diseases in, notification of (Infectious Disease (Notification) Act, 1889, sect. 13; 13 Halsbury's Statutes 815); infectious diseases in, prevention of (Canal Boats Act, 1877, sect. 4; 13 Halsbury's Statutes 790); inspection of (*ibid.*, sect. 5); registration of (*ibid.*, sect. 1; 13 Halsbury's Statutes 788); statutory provisions, enforcement of (Canal Boats Act, 1884, sect. 3; 13 Halsbury's Statutes 803).

*Census.*—Taking of (Census Act, 1920, sect. 1; 3 Halsbury's Statutes 555; Census Regulations, 1921 (Statutory Rules and Orders, 1921, No. 195); L.G.A., 1929, sect. 27; 10 Halsbury's Statutes 902).

*Cesspools*.—Nuisance from (P.H. (London) Act, 1936, sect. 82).

*Children and Young Persons*.—See "Factories and Workshops," Maternity and Child Welfare; child life protection (P.H. (London) Act, 1936, sects. 256 *et seq.*).

*Churchwardens*.—Transfer of powers of (London Government Act, 1899, sect. 23; 11 Halsbury's Statutes 1287).

*Clocks, Public*.—Provision and maintenance of (L.C.C. (General Powers) Act, 1903, sect. 65; 11 Halsbury's Statutes 1253).

*Common Lodging Houses*.—Inspection of (P.H. (London) Act, 1936, sect. 163); licensing of (*ibid.*, sects. 156 *et seq.*); medical inspection of inmates (*ibid.*, sect. 212); registration of (*ibid.*, sect. 160).

*Crematoria*.—Provision and maintenance of (Cremation Act, 1902, sect. 4; 2 Halsbury's Statutes 282; Mortlake Crematorium Act, 1936, sect. 33).

*Deaths*.—Registration of (Births and Deaths Registration Acts, 1886-1929; 15 Halsbury's Statutes 700 *et seq.*).

*Disinfection*.—Cleansing stations, provision of (P.H. (London) Act, 1936, sect. 124); persons, cleansing of (*ibid.*, sects. 126, 127); verminous articles, cleansing of (*ibid.*, sect. 122); houses, cleansing of (*ibid.*, sect. 123).

*Disorderly Houses*.—Keeping of, prosecutions for (Disorderly Houses Act, 1818, sect. 7; 4 Halsbury's Statutes 440; London Government Act, 1899, sect. 11; 11 Halsbury's Statutes 1232).

*Ditches*.—Offensive, cleansing and covering (P.H. (London) Act, 1936, sect. 83); substitution of drains for (*ibid.*, sect. 24).

*Drains*.—Bye-laws as to, enforcement of (P.H. (London) Act, 1936, sect. 84); connection of, with sewers (*ibid.*, sects. 38, 49); construction or alteration of, by agreement (*ibid.*, sect. 44); courts, drainage of (*ibid.*, sect. 41); disused, notice of existence of (*ibid.*, sect. 45); inspection of (*ibid.*, sect. 40); laying, supervision of (*ibid.*, sect. 39); new or rebuilt premises, in (*ibid.*, sect. 37); obstruction by soil or refuse, prevention of (*ibid.*, sect. 64); unlawful alteration, etc., of (*ibid.*, sect. 53); unlawful making or branching of (*ibid.*, sect. 52).

*Drinking Fountains*.—L.C.C. (General Powers) Act, 1928, sect. 35; 11 Halsbury's Statutes 1413.

*Drowned Persons*.—Burial of (Burial of Drowned Persons Act, 1808; 2 Halsbury's Statutes 273 *et seq.*).

*Education*.—School managers, appointment of (Education Act, 1921, sect. 36; 7 Halsbury's Statutes 150).

*Elections, Borough Council*.—Conduct of (Metropolitan Borough Councillors Election Rules, 1931-34).

*Electricity*.—Sixteen Metropolitan Borough Councils are authorised undertakers.

*Factories and Workshops*.—See "Alkali, etc., Works," "Bake-houses"; nuisances from (P.H. (London) Act, 1936, sect. 128); workshops, cleansing of (*ibid.*, sect. 129); employment in, of woman or young person (*ibid.*, sect. 131); register of (Factory and Workshop Act, 1901, sect. 131; 8 Halsbury's Statutes 536).

*Food and Drugs*.—Analyst, appointment of (Food and Drugs (Adulteration) Act, 1928, sect. 15; 8 Halsbury's Statutes 894); quarterly report (*ibid.*, sect. 25); colouring matter, prohibited (*ibid.*, sect. 2, and Public Health (Preservatives in Food) Regulations, 1925-6-7); margarine, etc., factories and wholesale premises, inspection (Food and Drugs (Adulteration) Act, 1928, sect. 22; 8 Halsbury's Statutes 898); preservatives, prohibited (*ibid.*, sect. 2, and Public

Health (Preservatives in Food) Regulations); sale of in pure and genuine condition, provision of securities for (Food and Drugs (Adulteration) Act, 1928, sect. 14; 8 Halsbury's Statutes 893).

*Food: Preparation, Storage and Sale.*—See "Milk and Dairies"; Artificial cream, premises used for manufacture or sale of, registration and inspection (Artificial Cream Act, 1929, sect. 2; 8 Halsbury's Statutes 908); bye-laws in respect of food premises, enforcement of (P.H. (London) Act, 1936, sect. 183); cattle for human consumption, inspection of (Public Health (Meat) Regulations, 1924); fish curer, bye-laws as to, enforcement of (P.H. (London) Act, 1936, sect. 146); fish, fried, vendor of, bye-laws as to, enforcement of (*ibid.*); food poisoning, notification of (*ibid.*, sect. 182); ice cream, premises for manufacture, storage and sale of, registration (*ibid.*, sects. 187 *et seq.*); imported foodstuffs, marking of (Merchandise Marks Act, 1926, and orders made thereunder; 10 Halsbury's Statutes 898 *et seq.*); margarine, etc., factories and wholesale premises, regulation of (Food and Drugs (Adulteration) Act, 1928, sect. 22; 8 Halsbury's Statutes 898); national mark, provisions relating to (Agricultural Produce (Grading and Marking) Act, 1928, and orders made thereunder; 1 Halsbury's Statutes 165 *et seq.*); offensive businesses, bye-laws as to, enforcement of (P.H. (London) Act, 1936, sect. 142); protection of food, bye-laws for, enforcement of (*ibid.*, sect. 183); sanitary provisions as to premises used for sale, etc. (*ibid.*, sects. 181, 188; Public Health (Meat) Regulations, 1924); preserved goods, premises used for preparation or manufacture, regulation of (P.H. (London) Act, 1936, sect. 187); slaughterhouses and knackers' yards, licensing of (*ibid.*, sect. 144); slaughtermen, licensing of (Slaughter of Animals Act, 1933, sect. 3; 26 Halsbury's Statutes 649); unsound and unwholesome food, inspection and destruction (P.H. (London) Act, 1936, sect. 180).

*Good Rule and Government.*—Bye-laws for, making of (Municipal Corporations Act, 1882, sect. 28; 10 Halsbury's Statutes 584; London Government Act, 1899, sect. 5, Sched. II., Part II.; 11 Halsbury's Statutes 1227, 1243).

*Health and Disease.*—Publication of information as to (P.H. (London) Act, 1936, sect. 208).

*Honorary Freedom of the Borough.*—Conferring of (L.C.C. (General Powers) Act, 1927, sect. 62; 11 Halsbury's Statutes 1898).

*Horseflesh.*—Sale, regulation of (P.H. (London) Act, 1936, sect. 186).

*Hospitals.*—Expenses, recovery of (*ibid.*, sect. 229); provision of (*ibid.*, sect. 226).

*Housing.*—Bye-laws (L.C.C.), enforcement of (Housing Act, 1936, sect. 8); clearance areas (*ibid.*, sects. 25 *et seq.*); improvement areas (*ibid.*, sects. 38 *et seq.*); insanitary premises, repair, demolition and closing of (*ibid.*, sects. 9 *et seq.*); inspection of district (*ibid.*, sect. 5); management (*ibid.*, sects. 83 *et seq.*); new accommodation, provision of (*ibid.*, sects. 45, 71 *et seq.*); obstructive buildings (*ibid.*, sects. 54 *et seq.*); overcrowding, abatement of (*ibid.*, sects. 57 *et seq.*); redevelopment areas (*ibid.*, sects. 34 *et seq.*); review of housing conditions (*ibid.*, sect. 71); sale of houses (*ibid.*, sect. 86); small dwellings, acquisition of (Small Dwellings Acquisition Act, 1899, sect. 1; 13 Halsbury's Statutes 881); underground rooms, restriction on use of (Housing Act, 1936, sects. 12; P.H. (London) Act, 1936, sects. 182 *et seq.*); bye-laws as to, making of (Housing Act, 1936, sect. 6).

*Infectious Diseases.*—Epidemic diseases, regulations as to, enforcement of (P.H. (London) Act, 1936, sect. 215); notifiable, addition to

number of (*ibid.*, sect. 305); notification (*ibid.*, sects. 192, 193); prevention (*ibid.*, sects. 194 *et seq.*); removal and detention of persons without proper lodging (*ibid.*, sects. 201 *et seq.*).

*Infirm Persons.*—Removal of, to institution (P.H. (London) Act, 1936, sect. 224).

*Joint Committees.*—Appointment of (L.G.A., 1894, sect. 57; 10 Halsbury's Statutes 813; London Government Act, 1899, sect. 8; 11 Halsbury's Statutes 1230).

*Jurors' Book.*—Preparation of (Juries Act, 1922, sect. 1; 10 Halsbury's Statutes 81).

*Land.*—Acquisition of—borough councils have power, under numerous statutes, to acquire land by agreement and, in many cases, by compulsory purchase, for the exercise of their functions, and several councils have been authorised to acquire land for special purposes, and to appropriate for certain purposes land which has been acquired for other purposes; alienation (London Government Act, 1899, sect. 5; 11 Halsbury's Statutes 1227).

*Landlord and Tenant.*—Decontrolled houses, regulation of (Rent, etc., Restrictions (Amendment) Act, 1933, sect. 2; 26 Halsbury's Statutes 268); publishing information (*ibid.*, sect. 10); prosecution by local authority (*ibid.*, sects. 10, 14).

*Libraries, Public.*—Provision of (Public Libraries Act, 1892, sect. 11; 13 Halsbury's Statutes 854).

*Local Land Charges.*—Maintenance of register (Land Charges Act, 1925, sect. 15; 15 Halsbury's Statutes 538).

*London Building Acts.*—Building frontage, lines of (London Building Act, 1930, sect. 22; 28 Halsbury's Statutes 230 *et seq.*); buildings, position of, with reference to streets (*ibid.*, sect. 13); buildings, projections from (*ibid.*, sect. 79); buildings, temporary (*ibid.*, sect. 89); houses, numbering of (*ibid.*, sect. 38); lamps, signs and other structures overhanging the public way, enforcement of bye-laws as to (*ibid.*, sect. 185); wooden structures, licensing of (*ibid.*, sect. 91).

*Marriages.*—Registration of (Marriage Acts, 1811–1929; 11 Halsbury's Statutes 15; 9 Halsbury's Statutes 324 *et seq.*).

*Maternity and Child Welfare.*—Provisions as to (P.H. (London) Act, 1936, sects. 250 *et seq.*).

*Medicine.*—Temporary supply of (P.H. (London) Act, 1936, sect. 227).

*Milk and Dairies.*—See "Food and Drugs," "Food: Preparation, Storage and Sale"; condensed milk, enforcement of regulations (Public Health (Condensed Milk) Regulations, 1923–1927); cow-keepers and dairymen, registration of (Milk and Dairies Order, 1926, Article VI.); cowhouses, licensing of (P.H. (London) Act, 1936, sect. 144); dairies, registration of (Milk and Dairies Order, 1926, Article VI.); designated milks, production and sale of, licensing (Milk and Dairies (Amendment) Act, 1922, sect. 3; 8 Halsbury's Statutes 880); dried milk, regulations as to (Public Health (Dried Milk) Regulations, 1923–1927); infected supply of milk, prohibition of (P.H. (London) Act, 1936, sect. 206); pure milk supply, provisions as to, enforcement of (Milk and Dairies (Consolidation) Act, 1915; 8 Halsbury's Statutes 864); Milk and Dairies (Amendment) Act, 1922; 8 Halsbury's Statutes 879; Milk and Dairies Order, 1926); sanitary provisions as to premises used for sale, etc. (Milk and Dairies Order, 1926).

*Mortuaries.*—Provision of (P.H. (London) Act, 1936, sects. 234 *et seq.*).

*Museums and Art Galleries.*—Provision of (Public Libraries Act, 1892, sect. 11; 13 Halsbury's Statutes 854).

*Nuisance.*—See also "Alkali, etc., Works," "Ashpits," "Bake-houses," "Offensive Trades," "Smoke." Abatement of (P.H. (London) Act, 1936, sect. 82); bye-laws as to, making and enforcing (*ibid.*, sects. 84, 139); factories, from (*ibid.*, sect. 128); inspection of district for (*ibid.*, sect. 2).

*Offensive Trades.*—Bye-laws (L.C.C.) as to, enforcement of (P.H. (London) Act, 1936, sects. 142, 143); carrying on of, restrictions on (*ibid.*, sects. 140 *et seq.*); nuisances from (*ibid.*, sect. 137).

*Offices.*—Provision of (Metropolis Management Act, 1855, sect. 66; 11 Halsbury's Statutes 895).

*Overhead Wires.*—Bye-laws as to, enforcement of (London Over-ground Wires, etc., Act, 1933, sect. 6; 26 Halsbury's Statutes 606).

*Parking Places.*—Provision of (Restriction of Ribbon Development Act, 1935, sects. 16, 20; 28 Halsbury's Statutes 275 *et seq.*); The Restriction of Ribbon Development (Power to Provide Parking Places) London Order, 1936).

*Parks and Open Spaces.*—Bands, provision of (L.C.C. (General Powers) Act, 1935, sect. 42; 28 Halsbury's Statutes 151); boats, provision of (*ibid.*); bye-laws and regulations, enforcement of (*ibid.*, sect. 46); charges, in respect of user (*ibid.*, sect. 45); charitable purposes, use for (*ibid.*, sect. 49); dancing, places for (*ibid.*, sect. 42); disused burial grounds (see "Burial Grounds"); enclosure of (L.C.C. (General Powers) Act, 1935, sect. 42); entertainments, provision of (*ibid.*); equipment, provision of (*ibid.*); games, provision for (*ibid.*); gymnasia, provision of (*ibid.*); provision of (Open Spaces Act, 1906, sects. 9, 16; 12 Halsbury's Statutes 387, 390); refreshments, provision of (L.C.C. (General Powers) Act, 1935, sect. 42; 28 Halsbury's Statutes 151); restriction of public rights (*ibid.*, sect. 44); rifle ranges (*ibid.*, sect. 42); skating (*ibid.*); structures, erection of (*ibid.*); swimming, baths and pools for (*ibid.*).

*Parliamentary Bills.*—Promotion of, and opposition to.

*Pharmacy and Poisons.*—Poisons List, Part II., registration of persons entitled to sell poisons (Pharmacy and Poisons Act, 1933, sect. 21; 26 Halsbury's Statutes 577).

*Rag and Bone Dealers.*—Bye-laws as to, enforcement of (P.H. (London) Act, 1936, sect. 146).

*Rag Flock.*—Sale and use, regulation of (*ibid.*, sect. 136).

*Rats and Mice.*—Destruction of (Rats and Mice (Destruction) Act, 1919, sect. 2; 18 Halsbury's Statutes 963).

*Refuse.*—House, collection and disposal (P.H. (London) Act, 1936, sects. 87 *et seq.*); obnoxious matters, removal of (*ibid.*, sect. 93); stable, cowhouse, removal of (*ibid.*, sect. 94); trade, collection and disposal (*ibid.*, sect. 92).

*Representation of the People.*—Absent voters' list, preparation of (Representation of the People Act, 1918, sect. 18, Sched. I.; 7 Halsbury's Statutes 556, 572, 578); parliamentary and local government electors, register of (*ibid.*).

*Rights of Way.*—Public, protection of (Rights of Way Act, 1932; 25 Halsbury's Statutes 191 *et seq.*).

*Sanitary Conveniences.*—Factories, in, provision of (P.H. (London) Act, 1936, sect. 106); inspection of (*ibid.*, sect. 108); public, provision and regulation of (*ibid.*, sects. 118 *et seq.*); water-closets, bye-laws as to, making and enforcement of (*ibid.*, sect. 107); nuisances from (*ibid.*, sect. 104); provision of (*ibid.*, sect. 105).

*Seamen's Lodging Houses.*—Bye-laws as to, enforcement of (Merchant Shipping Act, 1894, sect. 214; 18 Halsbury's Statutes 238; Transfer of Powers (London) Order, 1938).

*Sewers, Local.*—Alteration and discontinuance of (P.H. (London) Act, 1936, sect. 18); cleansing of (*ibid.*, sect. 21); construction and maintenance of (*ibid.*, sect. 17).

*Shellfish.*—Cleansing, provision of means for (*ibid.*, sect. 191).

*Shops.*—Workers in, sanitary and other arrangements for health and comfort of (Shops Act, 1934, sect. 10; 27 Halsbury's Statutes 235).

*Smoke.*—Bye-laws as to (P.H. (London) Act, 1936, sect. 151); consumption (*ibid.*, sect. 147); nuisance (*ibid.*, sects. 148, 150); research (*ibid.*, sect. 153).

*Streets.*—Borough councils possess wide powers in connection with the formation, construction, maintenance, improvement and widening of streets, and the erection and placing of traffic signs and signals therein, the construction of subways thereunder and bridges thereon, and other necessary powers for carrying out their functions as highway authorities.

*Street Trading.*—Regulation and licensing (L.C.C. (General Powers) Act, 1927, sects. 80 *et seq.*; 11 Halsbury's Statutes 1386).

*Tenement Houses.*—Sanitary provisions (P.H. (London) Act, 1936, sect. 184); bye-laws (L.C.C.), enforcement of (Housing Act, 1936, sect. 8); bye-laws, making and enforcement of (P.H. (London) Act, 1936, sect. 155).

*Tents, Vans and Sheds.*—Bye-laws as to, making and enforcement of (*ibid.*, sect. 135).

*Thames River.*—Embankments, footways and carriageways of, maintenance and lighting (Various private Acts; London (Transfer of Powers) Order, 1938).

*Town Hall.*—Provision of (L.C.C. (General Powers) Act, 1893, sect. 24; 11 Halsbury's Statutes 1117).

*Town Planning.*—Consultation with L.C.C. (Town and Country Planning Act, 1922, sect. 50; 25 Halsbury's Statutes 516); responsible authority, to be, where scheme so provides (*ibid.*).

*Trees.*—Highways, on, lopping of (L.C.C. (General Powers) Act, 1928, sect. 89; 11 Halsbury's Statutes 1414); planting of (L.C.C. (General Powers) Act, 1904, sect. 49; *ibid.*, 1260).

*Tuberculosis.*—Treatment of, arrangements for (P.H. (London) Act, 1936, sects. 219 *et seq.*).

*Vaccination Acts.*—Enforcement of (L.G.A., 1929, sect. 18; 10 Halsbury's Statutes 894).

*Vaults.*—Streets, under, control of (Metropolitan Paving Act, 1817, sects. 70, 71; 11 Halsbury's Statutes 860, 861; Metropolitan Management Act, 1855, sects. 101, 102; 11 Halsbury's Statutes 909).

*War Memorials.*—Maintenance of (War Memorials (Local Authorities' Powers) Act, 1923, s. 1; 10 Halsbury's Statutes 875).

*Water Supply.*—Buildings, provision in (P.H. (London) Act, 1936, sect. 96); cisterns, cleansing of (*ibid.*, sect. 99); fouling of (*ibid.*, sects. 101 *et seq.*); houses without, to be a nuisance (*ibid.*, sect. 95); public purposes, supply for (*ibid.*, sect. 100). [302]

## METROPOLITAN BOROUGH ACCOUNTS

*See ACCOUNTS OF LOCAL AUTHORITIES.*



## METROPOLITAN BOROUGH'S STANDING JOINT COMMITTEE

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Until 1908 there was in existence a body known as the "Metropolitan Borough Councils' Association," but its activities and constitution are obscure. It ceased to exist owing to the district auditor having refused to allow subscriptions to the Association as authorised charges in the borough councils' accounts.

In 1912 there appears to have been a need felt for a similar association, and on March 18, 1912, at a meeting representative of the City corporation and most of the metropolitan borough councils, held at the Guildhall, E.C., the Metropolitan Boroughs' Standing Joint Committee was brought into being. It has been in existence ever since without interruption. The first chairman was the Right Hon. Sir T. Vezey-Strong, K.C.V.O. (City of London).

This joint committee was constituted under sect. 57 of the L.G.A., 1894 (a), as applied to London by sect. 8 (4) of the London Government Act, 1899 (b), and no difficulty arose with the district auditor as to the payment of subscriptions.

It is composed of three representatives (one of whom may be and in most cases is the town clerk) appointed by the City corporation and three by each of the metropolitan borough councils. The members of the committee are appointed annually by the City and borough councils and they take office at the annual meeting which is held in December. [303]

The objects of the standing joint committee are :

- (1) The protection and advancement of the powers, interests, rights and privileges of the constituent councils ;
- (2) to discuss questions of London government, and to advise and assist the councils in the administration of their powers and duties ;
- (3) to watch over and protect the powers, interests, rights and privileges of the councils as they may be affected by legislation, or proposed legislation, public and private, or otherwise ; and
- (4) to express the views of the councils as a whole to the appropriate bodies or persons whenever deemed advisable. [304]

Examples of the matters which are dealt with by the committee are public or private bills for amendment of the law relating to any function of the metropolitan borough councils, proposals for new legislation affecting such councils, the opposition to any parliamentary bills which may prejudicially affect such councils and the formulation of new schemes to be administered by such councils or amendments

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(a) 10 Halsbury's Statutes 818.

(b) 11 Halsbury's Statutes 1280. Now repealed and replaced by s. 91 of L.G.A., 1933, which extends to London.

of existing schemes of a general character. The committee also fulfils a valuable function in providing a means for the dissemination to metropolitan borough councils of information on many subjects which affect their activities and in which uniformity of action is desirable.

In general the functions of the committee are advisory in character. It is, in addition, the only channel through which Government departments and the L.C.C. consult the interests of the metropolitan borough councils as a whole. It is becoming increasingly recognised as the mouthpiece of these councils, and the Transfer of Powers (London) Order, 1933 (c), was made by the M. of H. on a joint application by the L.C.C. and the standing joint committee—see the third recital to the order.

The committee appoint annually a chairman, vice-chairman, deputy-chairman, treasurer and honorary clerk. They also appoint standing sub-committees, each of which has its own honorary clerk.

The professional associations of officers, *i.e.* the Association of Metropolitan Town Clerks, the Association of Metropolitan Borough Engineers, the Institute of Municipal Treasurers, the Metropolitan Branch of the Society of Medical Officers of Health, and the Metropolitan Rating Valuers' Association, are intimately associated with the work of the joint committee for the purpose of affording technical assistance. With this object each association appoints an "advisory body" to consider and report to the sub-committees on items within their purview.

In addition to the usual standing sub-committees, the standing joint committee have recently set up a cleansing sub-committee which has examined and made recommendations with regard to the problem of refuse collection and disposal in London. This sub-committee is composed of one representative (not necessarily a member of the standing joint committee) appointed by the city corporation and one by each metropolitan borough council. [305]

(c) S.R. & O., 1933, No. 114; 26 Halsbury's Statutes 613.

## METROPOLITAN COMMONS

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See also titles:

COMMONS;	LAKE IN PLEASURE GROUNDS;
GAMES, PROVISION FOR;	OPEN SPACES;
HEATH AND FOREST FIRES;	PUBLIC PARKS.

**Introductory.**—Metropolitan commons appear first as a subject for legislative treatment different from that of commons generally (see title COMMONS) in sect. 14 of the Inclosure Act, 1845 (a). Although the

(a) 2 Halsbury's Statutes 447.

chief object of that Act was to facilitate the inclosure of common land, sect. 14 forbade the inclosure of any common land within fifteen miles of the City of London (or other distances of other populous places, according to an elaborate sliding scale), without the previous specific consent of Parliament. Following inquiry by a Select Committee of the House of Commons appointed in 1805, the Metropolitan Commons Act, 1866 (*b*), was passed, now extended and amended by other statutes collectively known as the Metropolitan Commons Acts, 1866-1898 (*c*). The Act of 1866 enacted that applications for inclosure of a metropolitan common were not to be entertained, as under the Act of 1845 they might have been, with the consent of Parliament. It defined "metropolitan commons" as lands subject at the passing of the Act to any right of common (to which were added by sect. 2 of the Metropolitan Commons Amendment Act, 1869 (*d*), any other lands subject to be inclosed under the provisions of the Inclosure Act, 1845) which were situate wholly or partly within the Metropolitan Police District as defined by the Metropolitan Police Acts, 1829 and 1839, respectively. (A description of this area will be found under the title METROPOLITAN POLICE DISTRICT.)

The Act provided for the making of a scheme for the local management of common lands, with a view to the expenditure of money on their improvement and the making of bye-laws and regulations for the preservation of good order on the commons. By sect. 22 such a scheme is to have full operation only when confirmed by a subsequent Act of Parliament with such modifications, if any, as to Parliament seem fit (*e*). [306]

**Presentation of Memorial.**—The central authority for the administration of the Act was the Inclosure Commissioners for England and Wales who were originally instituted under the Inclosure Act, 1845. By the Inclosure Commissioners Act, 1851, they were united with the Tithe and Copyhold Commissioners under the title of the "Land Commissioners for England," but on the formation of the Board of Agriculture in 1889 (*f*) their office was abolished and their powers and duties transferred to the Board. The Board of Agriculture has now been replaced by the Ministry of Agriculture and Fisheries (*g*).

The Minister is authorised to make a scheme in respect of a particular common on the submission of a memorial presented to him by the lord of the manor in which the common is situated, or by any of the commoners, or by the local authority, or if the common is situated within the districts of more than one local authority by one or more of such authorities (*h*). The number of bodies authorised to present such a memorial is extended by the Metropolitan Commons Amendment Act, 1869 (*i*), to include any twelve or more ratepayers who are inhabitants of the parish or parishes in which the metropolitan common is situated.

The local authority for the purpose of the Act of 1866 was defined

(*b*) 2 Halsbury's Statutes 567.

(*c*) *Ibid.*, 567-607.

(*d*) *Ibid.*, 579.

(*e*) *Ibid.*, 571.

(*f*) The Board of Agriculture Act, 1889; 3 Halsbury's Statutes 401.

(*g*) Ministry of Agriculture and Fisheries Act, 1919, s. 1; 3 Halsbury's Statutes 451.

(*h*) Metropolitan Commons Act, 1866, s. 6; 2 Halsbury's Statutes 568.

(*i*) *Ibid.*, 579.

in the First Schedule as follows: (1) Where the common is wholly or partly within the Metropolis as defined by the Metropolis Management Act, 1855, *i.e.* the City of London and the places mentioned in Scheds. A, B and C to that Act, the Metropolitan Board of Works, now succeeded by the L.C.C.; (2) Where the common is wholly outside the Metropolis and wholly or partly within the district of a local board, the local board (*k*); (3) In any other case, the vestry of the parish in which the common or any part thereof is situated. By sect. 1 of the Metropolitan Commons Act, 1898 (*l*), and the L.G.A., 1933 (*m*), a borough council (where the common is wholly or partly within a municipal borough), an U.D.C. (where it is wholly or partly within an urban district, not being a borough), and a parish council in other cases, are substituted for (2) and (3). [307]

**Preparation of the Scheme.**—On receiving a memorial from one of these bodies, the Minister if he thinks fit (sects. 7, 8) may make an examination and inquiry into the subject matter, and prepare a draft scheme to affect the common or any part of it. The draft scheme is to be printed and copies delivered to the memorialists, to the lord of the manor, and to the local authority, and otherwise published so as to give information to all parties interested (sect. 9). After a period of two months has elapsed from the first publication of the draft scheme, during which the Minister receives and considers any objection or suggestion which is made to him in writing concerning the proposals (sect. 10), the Minister may refer the matter to one of his officers to hold a public inquiry into the scheme. The officer's sittings are to be held in some convenient place near the common itself and are to be advertised at least fourteen days before the sitting in such manner as the Minister may direct. He has power to adjourn a sitting from time to time and may do so by giving notice and without personal attendance (*n*). After the officer has concluded his inquiry, he must submit a written report to the Minister setting out his opinion on the scheme.

As soon as possible thereafter, or if no inquiry has been held, after consideration of any objections and suggestions which have been received, the Minister may, if he thinks fit, finally settle and approve the scheme in a form which he considers suitable (sect. 13), after which the approved scheme must be certified and sealed by him (sect. 13) and notified to the memorialists and other parties in the same manner as a draft scheme (sect. 19; cf. s. 9, *supra*). [308]

**Usual Contents of a Scheme.**—For forms of a scheme under the Act, see *Encyclopedia of Forms and Precedents* (2nd ed.), Vol. III., pp. 744—757.

There is, however, no set form of scheme, such as exists for other commons (see title COMMONS [697]). Each is drafted to fit the special circumstances. The extent of the common is defined by reference to a map or plan sealed at the same time as the scheme and deposited at the M. of A. & F., and this (sect. 22) is conclusive when the scheme has been confirmed by Parliament (*o*). The authority for managing the common may be either a local authority or a body of electors

(k) See P.H.A., 1848 and L.G.A., 1858.

(l) 2 Halsbury's Statutes 607.

(m) 26 Halsbury's Statutes 306.

(n) 2 Halsbury's Statutes 571.

(o) S. 20, Commons Act, 1899; 2 Halsbury's Statutes 612.

conservators. Power is given to execute any works necessary for the protection and improvement of the common such as draining, levelling, fencing, cleaning ponds and planting trees or shrubs, and to prevent encroachment and trespass. Although no part of a metropolitan common may be inclosed permanently, schemes usually provide that small areas may be temporarily inclosed or set apart for specified purposes, e.g. for playing of specified or approved games or for the purpose of resting the turf.

Power is given to regulate the use of the common by bye-laws, subject to confirmation by the Minister of Health in the usual way (see title COMMONS, para. [697]). A scheme must (sect. 14) state what rights, if any, claimed by any person are affected by it, and in what manner and to what extent, and whether such person has consented to it.

Where a common is to be managed by a body of conservators, the scheme usually contains provisions for their appointment as a body corporate with perpetual succession and a common seal, and with power to appoint officers and servants and to provide and maintain such offices as may be necessary. Provision will be made in the scheme for meeting the expenses incurred by the conservators in carrying out its purposes. The conservators are required to meet at sufficiently regular intervals and to keep minutes of the business transacted at their meetings, and to keep accounts, which may be made subject to audit by district auditors of the Minister of Health. [800]

**Effect of Scheme.**—A settled and approved scheme is not authoritative *per se* and will only come into operation after it has been embodied in an Act of Parliament. Persons who are aggrieved by the scheme have the same rights to petition against and to oppose the Bill in its passage through Parliament as they would have in the case of an ordinary private Bill. The Minister has the same power to settle an amending scheme as he has to make the original scheme (sect. 27). Once a scheme is included in an Act it is conclusive as to the limits and extent of the common, and the owner of any land referred to in the map or plan embodied in the scheme cannot assert a title thereto inconsistent with the scheme (p).

The Minister must make an annual report to Parliament containing a full statement of his proceedings under the Metropolitan Commons Acts, and set out in full schemes which he has approved and the grounds of his approval. He must also state the objections which he received and his reasons for over-ruling them (sect. 21). [310]

**Saving of Private Rights over Common Land.**—Sect. 15 of the Act of 1866 contains a saving for private interests in common land in the same terms as that contained in sect. 6 of the Commons Act, 1899 (see title COMMONS [699]). Sect. 14 requires a scheme to state what private rights are affected and whether consent to their being affected has been given. If any person claiming any estate, interest, or right in, over, or affecting the common to which any scheme relates is dissatisfied with any determination made or implied by the Minister or by the scheme concerning any estate, interest, or right in, over, or affecting the common, he may (sect. 16) obtain a decision in manner provided by sect. 56 of the Inclosure Act, 1845. This section (g) enables the

(p) *Cook v. Mitcham Common Conservators*, [1901] 1 Ch. 387; 11 Digest 90, 1089.

(g) 2 Halsbury's Statutes 406.

complainant to deliver notice in writing to the Minister of his objection, and to bring the matter before the courts. As to compensation, see also note (r), *infra*. [311]

**Expenses of Preparing and Executing a Scheme.**—The expenses incurred by the Minister in connection with the examination of a memorial and the preparation of the scheme consequent on it are to be defrayed by the persons submitting the memorial. Any ratepayers or inhabitants of the district in or near which the common is situated, or the local authority, may, however, if they so desire, contribute towards or pay such expenses, and the Minister has power to require at any time after the presentation of the memorial either a sum on account of his costs or security for their payment on demand (sect. 24).

After a scheme for any particular common has been confirmed by Parliament, the local authority for the purposes of the Act may contribute such amount as they think fit towards its execution, either in a gross sum, or by annual payments, or otherwise. The L.C.C. have a similar power to contribute even where they are not the local authority (sect. 25). Some schemes (r) which set up conservators have provided for their deriving funds, in case of a deficiency of income from other sources, from the local authorities and some of them having a right to appoint some of the conservators. [312]

**Conclusion.**—The L.C.C. have obtained increased powers in several of their annual General Powers Acts for the administration of the metropolitan commons under their control, and in some cases bye-laws have been made under these Acts (s) and not under powers given by a scheme. For the Law of Property Act, 1925, sect. 193, and other statutes protecting metropolitan commons equally with other commons, see title COMMONS (t). [313]

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(r) *E.g.* the scheme for Petersham, embodied in the Metropolitan Commons (Petersham) Supplemental Act, 1900 (63 & 64 Vict. c. 1), which established conservators, six appointed by the town council of Richmond, three by the vestry of Petersham, and one by the lord of the manor, and enacted in clause 32 of the scheme as follows:

"The expenses incurred by the conservators in the carrying out of this Scheme including the payment of compensation, costs or damages (if any) as hereinbefore mentioned may be paid by the conservators out of any moneys coming to their hands under the provisions or for the purposes of this Scheme and so far as such moneys shall be insufficient to meet such expenses the same shall be paid by the council out of the borough fund. Provided always that the amount payable out of the borough fund under this clause except any amount payable under this Scheme for compensation costs or damages shall not exceed in any one financial year the sum of one hundred pounds except under the sanction of a resolution of the Council nor shall any expenditure liable to be defrayed under this clause out of the borough fund in excess of the said sum of one hundred pounds except as aforesaid be incurred by the conservators unless previously authorised by a resolution of the Council."

Petersham Common was subsequently vested in the town council of Richmond by sect. 5 of the Richmond, Petersham and Ham Open Spaces Act, 1902 (2 Edw. 7, c. ccliii.).

Similarly a scheme was made and conservators appointed for the regulation of Ham Common. The scheme is embodied in the Metropolitan Commons (Ham) Supplemental Act, 1901 (1 Edw. 7, c. xxxiii.). Ham Common was vested in the U.D.C. of Ham by s. 6 of the Act of 1902, just mentioned, and is now under the control of the Town Council of Richmond, in virtue of the Surrey Review Order, 1933.

(s) *E.g.* see L.C. (General Powers) Act, 1890, s. 14; 11 Halsbury's Statutes 1018.

(t) Volume III., pp. 307, 320 and 321.

# METROPOLITAN MAGISTRATES

*See STIPENDIARY MAGISTRATES.*

## METROPOLITAN POLICE

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*See also titles :*

BOROUGH POLICE ;  
COMMISSIONER OF POLICE ;  
COUNTY POLICE ;  
METROPOLITAN POLICE DISTRICT ;

POLICE ;  
POLICE, CITY OF LONDON ;  
POLICE PENSIONS.

**Introductory.**—The Metropolitan Police Force, which polices an area extending approximately fifteen miles in each direction from Charing Cross, excluding the City of London (*a*), was established by the Metropolitan Police Act, 1829, and gradually took over all the duties of the watchmen, beades and parish constables, the constables attached to the existing police courts, and the Bow Street horse and foot patrol. There have been a number of subsequent Metropolitan Police Acts : those principally affecting the constitution of the force are the Metropolitan Police Act, 1839, and the Metropolitan Police Act, 1933.

The general Police Acts such as the Police Act, 1919, and the police regulations made thereunder, the Police Pensions Act, 1921, and the Police (Appeals) Act, 1927, apply to the metropolitan as to other forces, with a few specific reservations. [314]

**Police Authority.**—Under the Act of 1829 the metropolitan police force was placed under the general control of one of His Majesty's principal Secretaries of State. In practice this function is assigned to the Home Secretary, who is thus the local police authority, and as such occupies in respect to the metropolitan police a position corresponding to that of the watch committee in a borough or the standing joint committee in respect of a county police force, as well as being the central police authority for all forces. [315]

**Organisation.**—The executive control of the force is exercised by the commissioner (*b*). In addition to the ranks laid down in Police Regulations I. and II. for police forces generally, there are in the metropolitan police force above the rank of chief constable a commissioner, assistant commissioners and deputy assistant commissioners (*b*), and between the ranks of sub-divisional inspector and

(*a*) See title METROPOLITAN POLICE DISTRICT.

(*b*) See title COMMISSIONER OF POLICE.

inspector there are the ranks of station inspector and junior station inspector (introduced in 1933) (*c*). Officers of the rank of junior station inspector and upwards will in future have to pass through the Metropolitan Police College, established in 1934, and are not members of the Police Federation (*d*).

The force is organised in twenty-two divisions each under a superintendent. In addition there is a Thames division for the river police. The divisions are grouped in four districts, radiating from the centre south-west, north-west, north-east and south-east, each under a deputy assistant commissioner with a chief constable as his second-in-command. Several hundred police officers are employed at headquarters in the several departments of the Commissioner's Office and in the Central Office of the Criminal Investigation Department. [816]

**Extent of Authority of Metropolitan Police.**—Members of the metropolitan police force have the powers and duties of constables not only within the metropolitan police district, but also within the counties of Surrey, Hertford, Essex and Kent (*e*), Berkshire and Buckinghamshire (*f*). Under the Metropolitan Police Act, 1839, they took over the duties of the river police, and patrol the River Thames from Teddington Lock to Dagenham on the north bank and Dartford Creek on the south, having the powers and duties of constables upon the River Thames within or adjoining the City of London and the counties of Middlesex, Surrey, Berkshire, Essex and Kent (*g*). They also police the Royal Palaces (*h*); and the Metropolitan Police Act, 1860 (*i*), authorised their employment in His Majesty's Dockyards and Military Stations anywhere in England and Wales. From 1860 there were five dockyard divisions of the metropolitan police—at Woolwich, Portsmouth, Devonport, Chatham and Sheerness, and Pembroke—and a sixth, at Rosyth, was added during the Great War (*k*); but since the War, marine and War Department constabularies have been gradually introduced, and no metropolitan police have been employed at dockyards or military stations since 1934. [817]

Constables of the metropolitan police force may at the request of the Lord Mayor be authorised by the Secretary of State to act within the City of London and *vice versa*, and in such case are to be under the command of their own officers (*l*). The services of constables of the metropolitan police force may also be lent in case of emergency to other police forces, and *vice versa*, by agreement between the police authorities concerned, under the general powers given by sect. 25 of the Police Act, 1890 (*m*), and in accordance with the regulations made under sect. 4 of the Police Act, 1919 (*n*).

Detective officers of the Metropolitan C.I.D. may also be sent,

(*c*) Police Regulations of June 28, 1934 (S.R. & O., 1934, No. 660).

(*d*) Metropolitan Police Act, 1933, s. 3; 26 Halsbury's Statutes 632.

(*e*) Metropolitan Police Act, 1839, s. 4; 12 Halsbury's Statutes 744.

(*f*) Metropolitan Police Act, 1839, s. 5; *ibid.*, 768.

(*g*) *Ibid.*

(*h*) *Ibid.*, s. 7.

(*i*) 12 Halsbury's Statutes 822.

(*k*) Metropolitan Police (Employment in Scotland) Act, 1914; *ibid.*, 862.

(*l*) City of London Police Act, 1839, s. 24 (2 & 3 Vict. c. xciv.).

(*m*) 12 Halsbury's Statutes 850.

(*n*) *Ibid.*, 868.



on application from other forces, to assist in the investigation of serious crimes, under arrangements made by the H.O.

In addition to the Exchequer contribution of half the net expenditure (*vide infra* "Finance"), the metropolitan police receive a special annual grant from the Treasury (o) to meet the cost of national and imperial services, including protection of the Royal Family and Ministers, and the services of police at State functions, the guarding of Government buildings, and duties in connection with immigration at certain ports. [318]

**Status and Powers of Constable.**—In addition to the general common law and statutory powers (p) a metropolitan police constable has special powers of arrest without warrant under the Metropolitan Police Acts of 1839 (g) and 1864, the Metropolitan Streets Act, 1867, the London Hackney Carriages Act, 1843, and the Metropolitan Fairs Act, 1868. He also has certain powers of arrest for offences against bye-laws or regulations, and of entry to premises, under the Metropolitan Management Act, 1855, the Parks Regulation Act, 1872, the L.C. (General Powers) Act, 1890, and the P.H. (London) Act, 1936. [319]

**Headquarters Staff.**—The greater part of the administrative and clerical staffs of the commissioner and receiver are not police officers. They are appointed by the Home Secretary, and under the Metropolitan Police Staff Superannuation Acts, 1875 and 1885 (r), and sect. 4 of the Police Act, 1909 (s), their conditions of service are made similar to those of persons in the Civil Service. By sect. 5 of the Metropolitan Police Courts Act, 1897 (t), the same superannuation Acts are applied to the staff of the metropolitan police courts, except the police magistrates. [320]

**Finance.**—The expenses of the metropolitan police, including salaries, wages and pension of the members of the force and of the staffs of the commissioner's and receiver's offices, as well as the expenses of the metropolitan police courts (u), and contributions towards the

(o) Police Act, 1909, s. 1; 12 Halsbury's Statutes 858.

(p) See under titles *Borough Police* and *County Police*.

(g) Corresponding provisions appear in s. 28 of the Town Police Clauses Act, 1847; 10 Halsbury's Statutes 88.

S. 171 of the P.H.A., 1875 (13 Halsbury's Statutes 696) which applies to those parts of the metropolitan police district which are outside the County of London, incorporates the provisions of the Town Police Clauses Act, 1847, with respect to obstructions and nuisances in the streets, fires, places of public resort, hackney carriages and public bathing. Ss. 21—60 are therefore in force, concurrently with the Metropolitan Police Acts, in urban districts outside the County of London but within the metropolitan police district. The remaining provisions of the Town Police Clauses Act only apply in the metropolitan police district where they have been specially incorporated in local Acts.

Parts VII., VIII. and IX. of the P.H.A. Amendment Act, 1907 (13 Halsbury's Statutes 940—946) likewise apply in certain of the outer portions of the metropolitan police district in which they have been put in force by orders of the Secretary of State under s. 3 of the Act.

(r) 12 Halsbury's Statutes 885 and 897.

(s) *Ibid.*, 859.

(t) 11 Halsbury's Statutes 360.

(u) Metropolitan Police Courts Act, 1890, s. 7; 11 Halsbury's Statutes 250. The salaries of the magistrates were also under this Act paid out of the police fund, but are now, by the Metropolitan Police Magistrates Act, 1875 (*ibid.*, 319), paid out of the Consolidated Fund.

cost of probation officers (*a*) are defrayed out of the metropolitan police fund, which is administered by the receiver (*b*).

This fund is made up in the main from the police rate levied in the metropolitan police district and the Exchequer grant (similar to that paid in respect of the county and borough police forces) amounting to one-half the net expenditure for police purposes. In addition the Treasury contributes £100,000 a year in respect of imperial and national services (*vide supra*) and the salaries of the commissioner and the receiver, and a contribution to the salaries of two assistant commissioners (*b*). Fees received and fines imposed in the metropolitan police courts (*c*) and fines imposed by county justices sitting in the metropolitan police district for offences against the Metropolitan Police Acts (*d*) are also, under the provisions of those Acts, paid into the police fund, together with any other fines formerly payable into the pension fund (*e*).

The amount of the police rate was originally limited to 8*d.* in the pound (*f*) but the limit, after being raised by a succession of statutes to 18*d.* in 1918, was abolished by the Police Act, 1919 (*g*). The rate is levied as part of the general rate on the rateable value of property within the metropolitan police district.

The amount of the rate is fixed each year by the Home Secretary on the recommendation of the receiver and is levied by means of warrants issued to the rating authorities by the commissioner (*f*).

The amounts collected are paid into the Bank of England (*h*) to the account of the receiver. A full account of all monies received and paid by the receiver must be made up to March 31 in each year and laid before Parliament within thirty days (*i*) together with a statement of the total number of men in the force by ranks and rates of pay (*k*) and grants of pensions to members of the metropolitan police staff (*l*). [821]

**Riot Damages.**—The receiver is the police authority (*m*) of the metropolitan police district for the purpose of settling claims for compensation for damage by riot which are payable out of the police rate. [822]

(*a*) Criminal Justice Act, 1925, s. 9 (1) (*c*); 11 Halsbury's Statutes 400.

(*b*) See title COMMISSIONER OF POLICE.

(*c*) Metropolitan Police Courts Act, 1839, s. 7; 11 Halsbury's Statutes 250.

(*d*) Metropolitan Police Act, 1829, s. 37; 12 Halsbury's Statutes 757.

(*e*) Police Pensions Act, 1921, s. 22; *ibid.*, 884.

(*f*) Metropolitan Police Act, 1829, s. 23; *ibid.*, 751.

(*g*) S. 7; *ibid.*, 869.

(*h*) Metropolitan Police Act, 1829, s. 10; *ibid.*, 747; The Metropolitan Police (Staff Superannuation and Police Fund) Act, 1931 (24 Halsbury's Statutes 315) authorises the opening of other bank accounts.

(*i*) The Metropolitan Police Act, 1829, s. 29 (12 Halsbury's Statutes 753) as amended by the Metropolitan Police (Receiver) Act, 1867, s. 1; *ibid.*, 828.

(*k*) Metropolitan Police Act, 1829, s. 9; *ibid.*, 769.

(*l*) Metropolitan Police Staff (Superannuation) Act, 1875, s. 2; *ibid.*, 836.

(*m*) Riot (Damages) Act, 1886, s. 9 and Sched. I.; *ibid.*, 847, 848.

## METROPOLITAN POLICE DISTRICT

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*See also titles :* LONDON ;  
LONDON ROADS AND TRAFFIC ;  
METROPOLITAN POLICE.

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Under the Metropolitan Police Act, 1829 (*a*), the limits of the metropolitan police district were determined by the schedule to the Act, which gave a list of the parishes, townships, precincts and places included. Sect. 34 of the Act gave power by Order in Council to extend the district so as to include any parishes, etc., in the counties of Middlesex, Surrey, Hertford, Essex and Kent, of which any part was situated within twelve miles of Charing Cross. No order was ever made under this section. The Metropolitan Police Act, 1839, sect. 2 (*b*), authorised the extension of the district by Order in Council to include any place which is part of the Central Criminal Court District (except the City of London), and any part of any parish, etc. within fifteen miles of Charing Cross, but only such part as was within fifteen miles.

The object of the Act of 1839 appears to have been to make the fifteen mile radius the boundary of the district, and for this reason such part of any parish as was outside the fifteen mile radius was to be excluded. But the district could not be exactly limited by the fifteen mile radius because some parishes such as *e.g.* Banstead, which began within the twelve mile radius, extended beyond the fifteen mile radius, and in Middlesex the boundaries of the Central Criminal Court District were outside the fifteen mile radius. It appears, therefore, to have been decided when making the Order in Council of January 3, 1840 (S.R. & O., Vol. 8) which extended the metropolitan police district to its present limits, not to take advantage of the power to include parts of parishes which were within the fifteen mile radius, and the district does not therefore include anything less than a whole parish. The readjustment of county districts in the counties bordering on the metropolitan police district involved changes as regards parishes which will have the result that parts only of parishes will be included in the Metropolitan police district unless and until the boundaries of the districts are readjusted, which would require further legislation. [323]

As extended by the Order in Council of January 3, 1840, the Metropolitan police district now comprises the county of London (excluding the City of London), the county of Middlesex, the county boroughs of Croydon, East Ham and West Ham, and parts of the counties of Surrey, Hertford, Essex and Kent—a total area of 699·42 square miles (*c*).

The Metropolitan Streets Act, 1867 (*d*), constituted the area within

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(*a*) 12 Halsbury's Statutes 743 *et seq.*  
(*c*) See Map at p. 173 of Vol. VIII.

(*b*) *Ibid.*, 707.  
(*d*) 19 Halsbury's Statutes 154 *et seq.*

a radius of six miles from Charing Cross as "General Limits" and empowered the commissioner by order to specify streets within this area as "Special Limits" for purposes of regulating traffic and preventing obstruction.

The Police.—"Metropolis" should not be confused with the "Metropolis" of the Metropolitan Paving Act, 1817, the Metropolitan Management Acts of 1855 and 1862, and the P.H.A., 1875. In these Acts it denotes the area now termed the Administrative County of London. [924]

## METROPOLITAN WATER BOARD

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See also titles : HYDRANTS ;  
LEE CONSERVATORS ;  
THAMES CONSERVATORS ;  
WATER SUPPLY.

**History.**—The early supply of water to the cities of London and Westminster and to the borough of Southwark on the south bank of the Thames presented no difficulty down to the end of the fourteenth century, for the sparse population which lived on the banks of the river obtained the water they needed either by their own labours or by their servants, bringing it up through the many lanes that led down to the riverside. Alternatively it could be bought from the "cobs" or water-carriers, who made a livelihood from its sale.

At a later date the practice grew up of bringing water from the numerous springs in the neighbourhood of London to public cisterns and fountains placed in various parts of the town, and these, together with the pipes which supplied them, were known as "conduits."

The population of London presently outgrew the supplies of water thus provided, and in 1544 (a) the corporation of the City of London obtained Parliamentary power to cut trenches and lay pipes for conveying water to the City from springs that might be found further afield in the vicinity of London. It was not, however, until something like half-a-century later that the works authorised by this Act were brought into being.

(a) 35 Hen. 8, c. 10.

The system of "conduits" was followed by the method of pumping which was introduced into London by a Dutchman, Peter Morrys, in 1582, when he established a pump worked by a water-wheel in one of the arches of Old London Bridge. His works were later extended until they occupied three of the arches of the old bridge. Although the works suffered from the competition of the New River Company they remained in existence until 1831 and were only finally abolished when the old bridge was destroyed.

During the reign of Elizabeth the question of an increased and better water supply for London seems to have been much considered. Several schemes for this purpose were laid before Lord Burleigh, and an Act of Parliament granted to the citizens of London a power to cut and convey a river from any part of Hertfordshire or Middlesex to the City of London, with a limitation of ten years for the performance thereof. The citizens did not exercise this power, but in the third year of James I. a fresh Act of Parliament was passed, empowering the mayor and citizens to bring "sweet water" from the springs of Chadwell and Amwell, in the county of Hertfordshire, in an open cut or close trench, not exceeding in breadth the size of ten feet. This was the germ of the "New River" scheme.

But the City corporation shrank from exercising these powers, which were handed over by power of attorney in 1609 to Hugh Myddleton (afterwards Sir Hugh) who secured the co-operation of a number of "merchant adventurers" including Sir Francis Drake, who in 1591 had brought water from Dartmoor to Plymouth in an open "leat" or channel. [325]

The first sod was cut in the spring of 1609. The work, carried through as rapidly as possible, was finished on Michaelmas Day, 1613, not, however, without encountering many difficulties both in the engineering obstacles to be overcome and the expense of carrying out the work.

By the time the canal had been carried as far as Enfield, Myddleton had spent the whole of his private fortune and only the help of King James enabled the undertaking to be carried on, after an appeal to the Mayor and Corporation of London for financial assistance had proved of no avail. The King had interested himself in the progress of the work from his Palace at Theobalds, and he agreed to provide half the cost of the work, both past and future, upon receiving half the profits, but without any responsibility for the management of the undertaking. This "King's Moiety" was transferred to Sir Hugh Myddleton by King Charles I. for an annuity of £400, which is still paid by the Metropolitan Water Board as "the Crown Clog."

The New River Company was followed by seven other water companies each having a different origin and a different history. Some of these companies in themselves represented amalgamations of smaller companies or absorptions of earlier water-supplying undertakings. The eight metropolitan water companies were: (1) *The New River Company*, dating from 1613, which absorbed the London Bridge Waterworks, the York Buildings Waterworks, the Hampstead Waterworks, and others; (2) *The East London Waterworks Company*, dating from the Shadwell Waterworks of 1669; (3) *The Kent Waterworks*, dating from the Ravensbourne Waterworks of 1701; (4) *The Chelsea Waterworks Company*, 1723; (5) *The Southwark and Vauxhall Water Company*, 1771; (6) *The Lambeth Waterworks*, 1785; (7) *The Grand Junction Waterworks*, 1798; (8) *The West Middlesex Waterworks*, 1806. [326]

These private enterprises had a variety of powers granted by Parliament in a large number of Acts. The areas or limits of supply of these companies overlapped, as Parliament disliked the idea of monopoly and endeavoured as a matter of principle to encourage competition. It was no unusual thing for two or three companies to be in the same street, touting for customers, with the result that the streets were being constantly dug up as customers changed from one company to another in order to get the advantage of preferential rates; and it is related that on occasion the navvies would in a spirit of partisanship engage in conflicts with pick-axes and shovels from their opposing entrenchments.

The companies soon, however, agreed to avoid overlapping areas by mutual agreement and thus frustrated the intention of Parliament, by turning the supply of water in London into what many regarded as a formidable monopoly. This fact, together with the objectionable character of the water supplied and its inadequacy, led to the beginning of the agitation against the companies. The ravages of cholera in 1840 and again in 1849 showed how impure was the water supplied by the companies from the sewer-fed reaches of the Thames, such as Battersca and Chelsea. An Act of 1852 made it compulsory, *inter alia*, that water from the Thames should be taken not lower than Teddington Lock. The opposition against the companies persisted, and after numerous inquiries, including three Royal Commissions, had reported upon the problem there came finally the efforts by the L.C.C. to secure the transfer of the metropolitan water supply to themselves. This was, however, opposed by the Government, who introduced a Bill on January 30, 1902, providing for the establishment of a Metropolitan Water Board for the purpose of acquiring the undertakings of the eight Metropolitan Water Companies and for supplying water within their areas. Thus the Metropolitan Water Board came into existence with the passing into law of the Metropolitan Water Act, 1902 (b). The Board is a body corporate with a common seal and has power to acquire and hold land without licence in mortmain (c).

Sect. 3 transferred to the Board all the powers and liabilities of the companies. [327]

**Constitution.**—The Board consists of 66 representatives who are appointed by the county, borough and urban district councils or groups of urban districts comprised within some 575 square miles which form the statutory area of the Board, as follows:

14 Appointed by the L.C.C.

5 By other county councils—Essex, Kent, Middlesex, Surrey, and Herts (1 each).

2 By the Common Council of the City of London.

29 By the metropolitan borough councils (City of Westminster, 2; the others, 1 each).

3 By county borough councils (West Ham, 2; East Ham, 1).

4 By borough councils—Leyton, Walthamstow, Tottenham and Willesden (1 each).

7 By joint committees of borough and urban district councils.

2 By Thames and Lee Conservancies (1 each).

(b) 20 Halsbury's Statutes 254.

(c) S. 1 (2); *ibid.*

The persons appointed need not of necessity be members of the bodies appointing them. The Board is re-elected every third year. [328]

**Limits of Supply.**—The area of supply taken over by the Board was that covered by the companies, but certain additions were made, more particularly the areas previously supplied by the water undertakings of the Enfield and Tottenham U.D.Cs. (sect. 11).

Such parts of the boroughs of Croydon and Richmond and the urban districts of Cheshunt and Ware as were within the limits of supply of any of the companies were excluded from the Board's area (*d*). The Board is required to afford supplies of water in bulk to these parts for distribution therein by the local authorities (*d*). The urban district of Cheshunt has since been added to the Board's limits of supply (*e*).

The area which the Board has *statutory* powers to supply under the 1902 Act and amending Acts covers 578.1 square miles.

The *contributory* area of the Board covers 342.5 square miles and consists of the areas which are directly represented on the Board. The councils of those areas are liable for any deficiency in the water fund (*f*).

The *actual* area of supply is considerably larger than the contributory area and only slightly smaller than the statutory area, being approximately 587 square miles.

The population of the statutory area according to the 1931 census was approximately 7,332,400, and whilst there has been since 1911 and continues to be at present a steady decline in the population of the administrative County of London (from 4,397,003 in 1931 to 4,280,200 in 1934) yet the growth of population in the remaining area of actual supply is of such dimensions that the estimated total population supplied by the Board at March 31, 1936, was 7,659,245.

The rateable value of the contributory area of the Board at April 1, 1935, was £82,480,090; the rateable value of the statutory area being about £84,000,000. [329]

**Bulk Supplies.**—Supplies of water in bulk are afforded to neighbouring water undertakers for distribution within their areas of supply. Croydon corporation, Richmond corporation, the Barnet District Gas and Water Company and the Sutton District Water Company are supplied with water derived from the Thames, while the Herts and Essex Waterworks Company and the Sevenoaks R.D.C. are supplied from wells. The quantity of water thus supplied amounted in 1934–35 to over 785 million gallons.

Agreements have also been entered into to afford supplies to the Colne Valley Water Company and the South West Suburban Water Company. [330]

**Powers and Duties.**—All of the defunct water companies had their own special powers, but many of the provisions of the Waterworks Clauses Acts, 1847 and 1863, were incorporated, and further uniformity had been obtained by the Metropolis Water Acts, 1852, 1871 and 1897 (*g*). The main object imposed upon the Board was to secure uniformity of administration throughout the whole of its area, especially with

(*d*) Metropolis Water Act, 1902, s. 12; 20 Halsbury's Statutes 262.

(*e*) Metropolitan Water Board Act, 1927, s. 4 (17 & 18 Geo. 5, c. lxxi.).

(*f*) Metropolis Water Act, 1902, s. 15 (2); 20 Halsbury's Statutes 264.

(*g*) See 20 Halsbury's Statutes 186 *et seq.*

regard to charges, the variety of and the differences in which were vexatious (*h*). It may be said generally that at the present time the system as a whole is uniform throughout. [331]

**Supply—Domestic and Non-Domestic.**—The paramount duty of the Board is to afford a supply of water for domestic purposes. It must always be able and willing to afford such a supply of water, but it has no power to force any person to take a supply. The Board must bring into every part of their area a supply of pure and wholesome water if demand is made "by so many owners or occupiers of houses or buildings . . . that the aggregate amount of water rate payable by them annually . . . in respect of the supply so required shall be not less than one-tenth of the expense of providing and laying down such mains and pipes" (*i*). On certain conditions being fulfilled, the Board must furnish a supply of water to all persons entitled thereto (*j*).

The onus upon the Board is to afford a supply only if requested. It is not a sanitary authority. The duty to require that a house shall have a proper supply of water for health purposes lies upon the local authority (*k*).

Any person is entitled to obtain a supply from his own well or otherwise if the water is wholesome and sufficient for domestic purposes. Such a person is not liable to water rate, but he may be required to contribute indirectly if a deficiency rate be levied (*l*). [332]

**Quality of Water.**—The supply of water to be brought to every part of the limits of supply must be "pure and wholesome" (*m*). No penalties are imposed upon the Board for failing to supply water which is "pure and wholesome," and it seems that any person aggrieved by a failure of the Board in this duty is left to his remedy by an action at law for damages.

In order to ensure that the water supplied is of the required quality, sect. 25 (1) of the Metropolis Water Act, 1902, provides that "the Water Board shall cause to be made chemical and bacteriological examinations of, and experiments as to the condition of, the water to be supplied by them." [333]

**Protection from Fouling by Gas.**—Sect. 64 of the Waterworks Clauses Act, 1847 (*n*) (in similar terms to sect. 25 of the Gasworks Clauses Act, 1847), provides for penalties to be imposed upon a person making or supplying gas whose gas fouls the water supplied by the undertakers. Sect. 65 of the Act of 1847 (*o*) gives power to examine gas pipes (*p*).

Sect. 48 of the Metropolis Gas Act, 1860 (*q*), was especially enacted

(*h*) Metropolis Water Act, 1902, s. 15 (6).

(*i*) Metropolitan Water Board (Charges) Act, 1907, s. 7; 20 Halsbury's Statutes 282.

(*j*) *Ibid.*, s. 8.

(*k*) See the P.H. (London) Act, 1936, ss. 95, 96; and P.H.A., 1936, ss. 137, 138, 139; 29 Halsbury's Statutes 422.

(*l*) Metropolis Water Act, 1902, s. 15 (4); 20 Halsbury's Statutes 265.

(*m*) Metropolitan Water Board (Charges) Act, 1907, s. 7; 20 Halsbury's Statutes 282. See also Waterworks Clauses Act, 1847, s. 35; *ibid.*, 198.

(*n*) 20 Halsbury's Statutes 207.

(*o*) *Ibid.*

(*p*) Gasworks Clauses Act, 1847, s. 26; 8 Halsbury's Statutes 1224.

(*q*) *Ibid.*, 1248.



for the protection of the London water supply and provides that "every gas company shall be answerable for any damage, spoil, injury or mischief which shall be done to any of the pipes, works or property of any such water company (*the London Water Companies*) or which shall or may be sustained by such water company by reason or in consequence of any act, matter or thing to be done or executed by such gas company, or any of their servants, agents or workmen." [384]

**Obligation to Afford a Supply for other than Domestic Purposes.**—The Board is under a limited obligation to afford a supply of water by measure for other than domestic purposes throughout the whole of their limits of supply (*r*). The "owner or occupier of any premises situate in or adjoining any street in which any main or service pipe of the Board is or shall be laid," is the only person entitled to demand such a supply. The Board is excused against affording such a supply in the event of "frost, unusual drought or other unavoidable cause or accident" (*s*). The paramount duty of the Board to afford a supply for domestic purposes is shown by the enactment that the Board is not bound to afford a supply for other than domestic purposes if by so doing the supply for domestic purposes would be jeopardised (*t*).

The Board has power also to afford (by agreement) a supply of water for any purpose (*u*). For public purposes, *e.g.* fire fighting, washing streets and sewers, sect. 17 of the Act of 1921 repeals special provisions of earlier private Acts and places the Board under the law set out in the Waterworks Clauses Act, 1847, except as regards rates and conditions of such supply which are to be upon the same basis as supply by measure.

As to the provision of fire plugs, *i.e.* hydrants, see title HYDRANTS. [385]

**Breaking up Streets for Mains.**—The Board has powers to lay mains and to break open the highways for so doing. Their powers are, in general, those given by the Waterworks Clauses Acts, 1847 and 1803, and the powers of the P.H.A., 1875 (re-enacted in the P.H.A., 1936 (*a*)), conferred by sect. 61 of the Metropolitan Water Board (Various Powers) Act, 1907 (*b*) (see under Water Supply). The Board may, on the application of the owner or occupier of premises within the limits of supply abutting on or being erected in any street laid out but not dedicated to the public use, furnish a supply and lay, take up, alter, relay, or renew in, across, or along such street, such pipes and apparatus as may be necessary for furnishing such supply (*c*). This overcomes the prohibition, contained in sect. 29 of the Act of 1847, forbidding undertakers to enter upon private land without consent.

Further provisions are contained in sects. 61 and 78 of the Act of 1907. [386]

**Communication Pipes.**—By the Metropolitan Water Board Act, 1932, all "communication pipes" are transferred to the Board together with rights and obligations. "Communication pipe" is to mean

(*r*) Metropolitan Water Board (Charges) Act, 1921, s. 14 (1); 20 Halsbury's Statutes 290.

(*s*) *Ibid.*, s. 14 (6).

(*t*) Metropolitan Water Board (Charges) Act, 1907, s. 32; *ibid.*, 287.

(*u*) *Ibid.*, s. 24.

(*a*) Part IV.; 29 Halsbury's Statutes 407.

(*b*) 7 Edw. 7, c. clxxiv.

(*c*) Metropolitan Water Board (Various Powers) Act, 1907, s. 63.

so much of the service pipe as extends from the main to the stopcock, or if no stopcock is fitted, to the boundary between the street and the premises supplied, whichever is nearer to the main (d) (sect. 2). [337]

**Rates and Charges. Domestic Charges.**—The Board's powers of charge for a supply of water for domestic purposes are laid down in sect. 8 of the Metropolitan Water Board (Charges) Act, 1907, as amended by sect. 7 of the Metropolitan Water Board (Charges) Act of 1921 (e). The charge to be made is "at such rate per annum as the Board shall from time to time fix not exceeding ten per centum" based on rateable value.

Water rate is ordinarily payable by the occupier, but in the under-mentioned instances the owner is required to pay the rate:

- (1) Where the rateable value of the premises does not exceed £20 (f).
- (2) Where the premises are let to a monthly or weekly tenant, or a tenant holding for any other period less than a quarter of a year, and the rent payable by the occupier includes the rate for the supply of water as determined by the Board (g). [338]

**Charges for Meter Supply.**—These are made under sect. 14 of the Metropolitan Water Board (Charges) Act, 1921 (h), and are based upon a sliding scale varying in the contributory area from 1s. 1d. per 1,000 gallons where the quantity does not exceed 50,000 gallons per quarter down to 8½d. per 1,000 gallons for quantities exceeding 5,000,000. In the non-contributory area an additional 1d. per 1,000 gallons is charged. [339]

**Other Charges.**—Charges for supplies other than domestic and meter supplies are made by agreement (i). [340]

**Deficiencies.**—Sect. 15 of the Metropolitan Water Act, 1902, as amended by sect. 8 of the Act of 1921 (k), provides for the levying of precepts where the Board's sources of income are unable fully to cover the expenditure. Only those authorities are liable to contribute who are represented on the Board. Contribution is based on the aggregate rateable value in each district of the hereditaments *supplied with water*. [341]

**Power to make Bye-Laws.**—Sect. 16 of the Metropolitan Water Board Act, 1932, replaces earlier powers and enables the Board to make bye-laws for the purpose of preventing the waste, undue consumption, misuse or contamination of water. The bye-laws are subject to sect. 250 of the L.G.A., 1933 (l), and penalties imposed for breach of the bye-laws so made are recoverable in accordance with the provisions of that Act.

The relationship of the Board to the Thames and Lee Conservancies with respect to right to abstract water and payment therefor and also with respect to representation thereon are set out under those titles. [342]

(d) See ss. 1 to 12 (22 & 23 Geo. 5, c. lxxxv.).

(e) 20 Halsbury's Statutes 294.

(f) Waterworks Clauses Act, 1847, s. 72, as varied by the Metropolitan Water Board (Charges) Act, 1907, s. 4 (20 Halsbury's Statutes 282).

(g) Metropolitan Water Board (Charges) Act, 1907, s. 26; *ibid.*, 286.

(h) 20 Halsbury's Statutes 299.

(i) Metropolitan Water Board (Charges) Act, 1907, s. 24; *ibid.*, 286.

(k) *Ibid.*, 294, 294.

(l) 26 Halsbury's Statutes 440.

**Borrowing Powers.**—Powers to borrow money are contained in the Metropolis Water Act, 1902, sects. 16–18, the Metropolitan Water Board Acts of 1906 and 1929, sect. 3, and the Acts authorising new works. The Metropolitan Water Board Stock Regulations, 1903, made by Order in Council should also be consulted. [343]

## MIDWIVES

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*See also title: MATERNITY AND CHILD WELFARE.*

**Introductory.**—Up to the beginning of the present century, women who practised as midwives generally possessed no qualification, and many were too illiterate to profit by the experience gained in practice. The Midwives Act, 1902 (*a*), sought, therefore, to prevent further women from holding themselves out as midwives, who did not comply with certain rules as to training and examination, and for this purpose it established a Central Midwives Board and local supervisory authorities. This Act has been followed by three amending Acts, the Midwives Act, 1918 (*b*), the Midwives Act, 1926 (*c*) and the Midwives Act, 1936 (*d*).

The Acts render liable to a fine not exceeding five pounds a woman who is not certified under the Act of 1902, if she takes or uses the name or title of midwife either alone or in combination with other words, or any name, title, addition, description or badge, implying certification or special qualifications to practise midwifery or recognition by law as a midwife. The Act of 1926 further prohibited, under liability to a fine of ten pounds, any male person, or a female not certified under the Act, from attending a woman in childbirth otherwise than under the direction and personal supervision of a duly qualified medical practitioner or in sudden and urgent necessity. Sect. 6 of the Act of 1936 further renders liable to a fine not exceeding ten pounds any person (male or female), not a certified midwife or a nurse on the general part of the register kept under sect. 2 of the Nurses Registration Act, 1919 (*e*), who receives any remuneration for attending as a nurse on a woman in childbirth or during the ten days following. This section, however, does not come into force until the Minister of Health applies it by order in any area in which he is satisfied that a service of domiciliary midwives is adequate. In addition to the above-mentioned exception in the Act of 1926 for cases of sudden or urgent necessity, the Acts provide for attendance of medical students and pupil midwives. Nothing in the Acts prevents the practice of legally qualified medical practitioners,

(*a*) 11 Halsbury's Statutes 729.

(*b*) *Ibid.*, 744.

(*c*) *Ibid.*, 783.

(*d*) 29 Halsbury's Statutes 264.

(*e*) 11 Halsbury's Statutes 748.

and a proviso to sect. 6 of the Act of 1936, above mentioned, saves from its operation women certified in obstetric nursing by a hospital to which the Minister applies the proviso, if they were in practice before January 1, 1937. [344]

**Central Midwives Board.**—The Central Midwives Board set up by the Act of 1902 originally consisted of ten persons; their constitution is now regulated by Orders in Council made under sect. 1 of the Act of 1918 (*f*). The Board at present consist of four members appointed by the Minister of Health (of whom two are midwives), one each appointed by the Royal College of Physicians, the Royal College of Surgeons, the Society of Apothecaries, the Society of Medical Officers of Health, the County Councils Association, the Association of Municipal Corporations, and the Queen's Institute of District Nursing, and three members appointed by the Incorporated Midwives Institute. The Board have a general power to do anything necessary for carrying out the provisions of the Acts, and they are invested with six specified powers and duties as follows: (1) to frame rules on various matters; (2) to appoint examiners; (3) to arrange for and fix examinations; (4) to publish a roll of midwives; (5) to decide upon the removal from the roll of the name of any midwife; and (6) to issue and cancel certificates. Rules framed by the Board do not become valid until they have received the approval of the Minister of Health who, before giving his approval, must take into consideration any representations of the General Medical Council with respect thereto. These (*g*) rules regulate the course of training, the admission to the roll, and the practice of midwives.

A woman presenting herself for examination for the certificate is required to pay a fee not exceeding one guinea, and these fees provide the nucleus of the Board's income. The Board are bound to publish a certified financial statement each year; if an adverse balance is shown, and such balance is approved by the Minister of Health, the Board may apportion the balance between the several counties and county boroughs in proportion to the population of those counties and county boroughs according to the latest published census returns (*h*). About 50 per cent. of the expenses of the Board thus falls upon local authorities. [345]

**The Roll of Midwives** contains the names of all midwives certified under the Act, and each entry indicates the conditions in virtue of which the certificate was granted. A copy of the midwives roll is evidence that the women entered therein are certified under the Act, and the absence of a name that the woman is not so certified. The evidence may in each case be rebutted by a certificate under the hand of the secretary of the Board (*i*).

The Central Midwives Board have power to erase from the roll the name of any woman from whom no answer has been received within six months to a registered letter sent to her at her address on the roll, inquiring whether she has ceased practice or changed her residence. The Board have also power to divide the roll into two parts showing practising and non-practising midwives (*k*), the practising list to be

(*f*) 11 Halsbury's Statutes 744; S.R. & O., 1920, No. 2410 and S.R. & O., 1921, No. 765.

(*g*) It is understood that at the date of going to press, the rules were being revised. References in this Article to their requirements must be understood as being to the rules in force at February 1, 1937.

(*h*) S. 5, Midwives Act, 1902, amended by s. 2, Midwives Act, 1918; 11 Halsbury's Statutes 731 and 745.

(*i*) S. 3, Midwives Act, 1918, amending Act of 1902, see 11 Halsbury's Statutes 732.

(*k*) S. 3, Midwives Act, 1926; *ibid.*, 783.

kept up to date annually, the other at intervals, not exceeding five years. This has not so far been done, but the current roll distinguishes, by a mark against the names, those who have notified an intention to practise. [346]

The Local Supervising Authorities established by the Midwives Act, 1902, were county and county borough councils, but the Minister of Health, after consultation with the county council and the holding of a local inquiry if so requested, may under the L.G.A., 1929 (l), on application by any district council which have a maternity and child welfare committee under the Maternity and Child Welfare Act, 1918 (m), and employ a whole-time M.O.H., direct that this council shall become the local supervising authority under the Midwives Acts, if he is satisfied that they are in a position to discharge all the functions. The Minister has power to revoke his order.

The local supervising authority receive from the midwife a notice of her intention to practise in their area and must supply the Board each January with the names and addresses of all midwives who have given this notice during the preceding year. The authority are also required to report at once to the Board any change in the name or address of a midwife, and the death of any midwife in their area. Where a midwife is convicted of any offence, this also must be reported to the Board. Upon the local supervising authority is placed (n) the general duty of supervision of midwives to see that the rules of the Board affecting their practice are conformed to. Local authorities do this usually through special officers known as "inspectors of midwives" who act under the general supervision of the M.O.H. Under sect. 9 (2) of the Act of 1936, the Minister of Health may make regulations prescribing the qualifications of persons appointed to exercise this supervision. [347]

When any case of malpractice, negligence or misconduct on the part of a midwife is brought to the notice of the local supervising authority, the authority must investigate it and if a *prima facie* case appears to be established report it to the Board (o). While this is the strict duty of the authority, many authorities have hesitated to report to the Board cases where only minor faults appeared, and a practice has grown up in many areas whereby the less serious cases are dealt with by the authority by way of warning and caution, the authorities reporting those cases only which on investigation have proved graver, and those where one or more warnings have already been given.

The expenses of local supervising authorities are defrayed out of the county fund in a county and the general rate fund in a borough (p). Where a district council are constituted a local supervising authority by order under the L.G.A., 1929 (see above), the order provides the manner in which expenses are to be defrayed. [348]

The Suspension of Midwives from practice may, in certain circumstances, be carried out by the local supervising authority and in

(l) S. 62; 10 Halsbury's Statutes 925. In March, 1936, thirty-three county districts had been constituted local supervising authorities under this section. At that date there were about 220 county district councils which had established maternity and child welfare committees but had not been constituted local supervising authorities.

(m) 11 Halsbury's Statutes 742.

(n) S. 8, Midwives Act, 1902; 11 Halsbury's Statutes 732.

(o) *Ibid.*

(p) S. 15, Midwives Act, 1902; s. 10, R. & V.A., 1925; 11 Halsbury's Statutes 734; 14 Halsbury's Statutes 631.

other circumstances by the Board themselves. In all cases, however, the procedure set out in the rules of the Board must be followed. The local supervising authority may suspend a midwife on one or other of three grounds: (a) for the purpose of preventing the spread of infection (g), (b) where the authority have taken proceedings against a midwife in a court of justice, until the case is decided (r), and (c) where the authority have reported the midwife to the Central Midwives Board, until the case is decided (r). In each case the authority must communicate their decision in writing to the midwife and report it, with the reasons, to the Central Midwives Board. In the first case, the authority must suspend the midwife from practice if this procedure appears necessary to prevent the spread of infection. This suspension can only be for such a time as is necessary for the disinfection of the person, clothing and appliances of the midwife, and if this time is more than twenty-four hours, the circumstances must be reported to the Board, who may revise the period of suspension. Where disinfection is properly carried out, the local authority must give written notice to the midwife to this effect. Some distinctions of practical importance arise in connection with preventing the spread of infection. On the one hand, under rule E. 9, a midwife who has been in contact with a person whose condition may raise suspicion of infection, or who is herself liable to be a source of infection, or has laid out or assisted to lay out a body for burial, must notify the local supervising authority, and (apart from any question of suspension) must have her person, clothing and appliances, and if necessary her dwelling, disinfected to their satisfaction, while on the other hand, if she is suspended by the authority in order to prevent the spread of infection and is not herself in default, the authority are bound, under the 1926 Act (s), to pay her reasonable compensation for loss of practice. There are four classes of case met with: (a) where the midwife herself is suffering from a disease, such as scarlet fever, erysipelas, or pemphigus, which she is liable to convey to her patient, (b) where the midwife, though not herself suffering, is living in a house where a person is so suffering, (c) where the midwife is, or has been, in attendance on a case of puerperal infection or other infectious disease, and is thereby liable to spread the infection, and (d) where the midwife, whether or not she has recently been in contact with such a disease, has become a carrier of the disease, though not herself suffering. Each of these four cases requires different treatment. In the first, there is usually no need of formal suspension, the midwife going into hospital and being treated there until she is free from infection. In the second case, the midwife will usually be suspended for such a time as will enable the case to be removed to hospital or, failing this, will permit the midwife to find other housing accommodation, and will allow for a period of disinfection and quarantine. If the midwife refuses to find suitable housing accommodation she can be held to be in default by wilfully remaining liable to spread infection, in which circumstances no compensation need be paid to her. In the third case, suspension is necessary for such a period as will permit the midwife to be declared free from infection and her clothing and equipment disinfected. In the fourth case, much difficulty is experienced, as a midwife may carry the streptococcus hæmolyticus for an indefinite period, and it may become necessary to continue the suspension for a long time.

(g) S. 8, Midwives Act, 1902; 11 Halsbury's Statutes 732.

(r) S. 6, Midwives Act, 1918; *ibid.*, 745.

(s) S. 2 (1), Midwives Act, 1926; *ibid.*, 768.

In this case, a midwife might reasonably be required to undergo such treatment as would enable her to become free from infection as soon as possible, as a condition of the payment of compensation. The amount of compensation to be paid is governed by the amount of the loss of her practice as a midwife; it does not, for example, extend to the loss of the whole of the fees which would have been obtained where a midwife runs a maternity home. [349]

Where a local supervising authority have suspended a midwife pending the decision of her case by a court or the Board, and the case is decided in her favour, the authority may pay the midwife reasonable compensation (*t*).

The Board themselves may suspend a midwife found guilty of disobeying the rules, or of other misconduct, in place of striking her name off the roll. The Board usually do this where the facts of the case have disclosed that the midwife requires further training, and the suspension is made for such a period as will cover the further training prescribed, the case being reviewed at the end of this period. The Board may also suspend a midwife from practice who has been found guilty by the Board of disobeying the rules, or other misconduct, and who has intimated her intention to appeal to the High Court against the Board's decision. In this case, the suspension continues until the case is decided by the High Court and, if the case is decided in her favour, the midwife may receive reasonable compensation from the Board (*t*). [350]

**The Duties of Midwives.**—A midwife before commencing to practise in any area is required to give notice to the local supervising authority of her intention to do so, and, while in practice in the area, she must give a similar notice each year in January (*u*). A midwife practising in the areas of different local supervising authorities must send notices to each authority, but if she has only casually attended a case in another area, she is merely required to send a notice of having done so to the authority within forty-eight hours of her attendance. The particulars to be given in these notices are set out in the rules. [351]

The most important rules dealing with the duties of midwives are those in part E., which regulate, supervise, and restrict within due limits their practice. It must not be understood that these rules lay down all the duties of midwives; they simply set out certain procedure which must be carried out and certain lines of action which must not be followed. There are only two exceptions to the applicability of all these rules to all midwives; firstly, where a midwife is acting as a maternity nurse (that is to say, as defined in Rule E. 1, where a medical practitioner has been engaged to deliver the patient and is in charge from the onset of labour and throughout the lying-in period); secondly, where a midwife is acting in a hospital approved by the Central Midwives Board and having a resident medical officer. Even in these excepted cases, midwives remain subject to many of the rules (*a*). It should be noted that at present the rules do not deal with maternity nurses as such, but merely with midwives who practise as maternity nurses. The "approval" above mentioned as conferring the second exemption is only given after a careful and critical survey of the internal arrangements, staffing and administration of the institution. [352]

The rules governing the duties of midwives lay down the principle

(*t*) S. 6 (2), Midwives Act, 1918; 11 Halsbury's Statutes 746.

(*u*) S. 10, Midwives Act, 1902; *ibid.*, 733.

(*a*) For details, see Rules E. 1 (*a*) and E. 2 (*a*) and (*b*).

that a midwife who has once accepted responsibility to attend a confinement remains responsible for seeing that the rules are carried out, even though the patient is actually attended or delivered by another midwife; the midwife who actually attends or delivers the patient is equally responsible.

There are two important restrictions on the practice of midwives in the rules. The first prevents a midwife, except in grave emergency, from undertaking any operative procedure or treatment outside her province, and the second prevents a midwife from using any drug on her own responsibility unless she has been instructed in and is thoroughly familiar with its use. This wording is general, and each case is dealt with according to its facts and circumstances. The Board indicate, as an example, that they would regard as an offence the giving of pituitary extract before the birth of the placenta, except in a grave emergency, but there are other circumstances which might come within the wording. A note must be kept of all use of drugs except a simple aperient. The rules also forbid midwives to lay out dead bodies of persons except those whom they were attending as midwife or nurse at the time of death. In towns, this is of little importance, but in country districts a midwife is often called upon to do this service which might, as in the case of deaths from infectious disease, seriously endanger her patients. [858]

The rules recount in detail the circumstances in which a midwife must call to her aid a registered medical practitioner, and many examples of the conditions arising where this is necessary are given, but the examples are not exhaustive of all the cases of illness of the patient or child or of abnormalities occurring during pregnancy, labour, or lying-in, where a medical practitioner must be sent for. It is to be noted that every abnormality must be dealt with in this way, and the examples show that even very slight deviations from the normal are, if at all significant, to be treated as abnormalities. Thus, albumen in the urine, rise of temperature to 100.4° F. for twenty-four hours or its recurrence within twenty-four hours, or a rise to 99.4° F. on three successive days, and inflammation or discharge from the eyes of the infant, however slight, are all to be regarded as abnormalities within the meaning of the rules. The midwife, in calling in a doctor, must call in the one desired by the patient, or, if the patient cannot be consulted, by a responsible member of the family. She must use the form prescribed by the rules, and send a copy of the form as soon as possible to the local supervising authority. The midwife takes her instructions from the doctor, and, if danger is threatened, she must remain with the patient until the doctor arrives. Much difficulty was previously experienced by midwives in obtaining medical help where necessary, in cases of poverty, and sect. 14 of the Act of 1918 was passed to meet the point. This section provides for the payment by the local supervising authority of a sufficient fee to the doctor according to a scale fixed by the Minister of Health. This fee must be paid by the authority: (1) if it be a case where the midwife has called in a doctor according to the rules; (2) if the doctor claims the fee and states the nature of the emergency; and (3) if the claim is submitted within two months from the date on which he was called in (b). Sect. 9 of the Midwives Act, 1936, empowers the Minister of Health, in addition to fixing fees, to prescribe the conditions under which a fee is payable. Regulations fixing fees and prescribing conditions were made on October 26, 1936 (c).

(b) S. 2 (2), Midwives Act, 1926; 11 Halsbury's Statutes 783.  
(c) S.R. & O., 1936, No. 1112.



The rules give instructions to midwives on their general duties as to cleanliness, the clothing to be worn by them, and the appliances and equipment to be taken to a case. They detail the duties of midwives to patients, stating the observations which the midwife must make and record at each visit; the precautions to be taken in making examinations, and other matters; while four important rules deal specifically with the duty of the midwife to the new-born infant. Midwives' attendance is held to cover a period of at least fourteen days after birth in a normal case.

Finally, the rules deal with the register and records which must be kept, and the various notifications which have to be made to the local supervising authority (deaths, stillbirths, laying out of a dead body, liability to be a source of infection, and artificial feeding of the infant are examples of the forms to be used). [354]

**Proceedings on Complaints** as to the conduct of a midwife are regulated by part D of the rules. Complaints may or may not originate with the local supervising authority; if not, they are referred to that authority if investigation by them is desirable. The secretary of the Board lays the complaint in the first instance, before a committee (penal cases committee), who report to the Board whether or not proceedings ought to be commenced for the removal of the name from the roll. If this committee think that proceedings should not be commenced, the local supervising authority concerned must have an opportunity of submitting further observations. If the committee report, or the Board direct, that proceedings should be commenced, the local supervising authority concerned (if they originated the proceedings, or have made a report, or if the committee so direct) are asked by the secretary if they desire to undertake the conduct of the case. If the local supervising authority do not so desire, or if they decline to commence or continue the proceedings after having given notice of their wish to do so, the case may be undertaken by the secretary, or such other person as the penal cases committee direct. The person or authority undertaking the conduct of the case is called the "complainant." The complainant is required to furnish to the Board a statement of the nature and particulars of the charge against the midwife, including statutory declarations, and any documentary evidence intended to be used as evidence against the midwife. The Board then send to the midwife a notice (a) giving the date of hearing of the case and requiring her to attend; (b) requiring her to send to the secretary, seven days before the hearing, her certificate and such records of her work as are specified in the notice; and (c) requiring her to send to the secretary, seven days before the hearing, an answer to the charge, in writing. Enclosed with this notice must be a copy of the rules of procedure in the case, particular attention being drawn to the rule giving the midwife an opportunity to be represented or assisted at the hearing by a friend or legal adviser. The midwife must give the Board four days' notice if she intends to be so represented. Further, there must be enclosed a copy of the statement of the nature and particulars of the charge against her, furnished by the complainant. Such notice and enclosures must be posted to the midwife so as to allow fourteen clear days between the date of posting and the day appointed for hearing. The secretary must inform the complainant of the substance of the answer to the charge furnished by the midwife, and the nature of a counter-charge (if any) made by the midwife, and he must, in any case,

send to the midwife, at least four days before the hearing, a copy of all documentary evidence intended to be used against her, whether included in the complainant's statement or not. [355]

The case is heard at a special meeting of the Board, of which at least four days' notice is given. The complainant must be represented by a barrister or solicitor not being the M.O.H. or assistant M.O.H. of the complainant. The midwife may be represented by a friend or adviser who may or may not be a barrister or solicitor. The hearing does not follow the strict procedure of a court of law, but examination, cross-examination and re-examination are allowed, with a wide power of waiving rules to avoid injustice. By sect. 9 (4) (b) of the Act of 1936 the provisions of the Arbitration Act, 1889, relating to the summoning, attendance and examination of witnesses, the production of documents, the administration of oaths and the taking of affirmations may be applied by the Board's rules. The records of the midwife, and any relevant matter in her register, may be referred to by any of the parties, if they so desire, as part of the case. If the charge is found proved, the Board may ask for a report from the secretary, or any local supervising authority, on the previous conduct of the midwife, and the midwife or her representative is permitted to submit observations thereon. The Board may then caution or censure the midwife, or direct that her name be removed from the roll, and cancel her certificate, and may go further and prohibit her from attending women in childbirth in any other capacity (d). The Board, instead of taking any of these actions, may suspend the midwife from practice for a certain time, or may postpone sentence under such conditions as they think fit. [356]

Any woman thinking herself aggrieved by any decision of the Board removing her name from the roll and/or prohibiting her attending women in childbirth in any other capacity, may appeal to the High Court within three months after the notification of such decision to her. No further appeal is allowed. Sect. 9 (5) of the Act of 1936 provides for the payment of expenses incurred by a local supervising authority in taking proceedings against a midwife before the Board under the rules, declaring that any expenses so incurred shall be defrayed in the same manner as the expenses of the authority under the Act.

The rules also set out the procedure to be adopted on an application for restoration of a name to the roll. The application must, unless the Board otherwise determine, be supported by certificates from the local supervising authority and two persons of standing, and the Board may require a further period of training before restoration, or may restore the name at once on a payment of a fee of ten shillings and sixpence. [357]

The Training of Midwives is regulated by the rules. At the time of going to press, the relevant rules were under revision, and therefore it is not desirable to set out in detail the provisions hitherto in force. Reference to the new rules should be made. It is enough to say that the compulsory training comprises theoretical and practical instruction in examination and supervision of women in the course of pregnancy; the witnessing of labours, and personally delivering the patients, both in an institution and in their homes; and the nursing during the lying-in period of women and their infants, in institutions and in their own homes.

The Act of 1936 gives power to the Board to frame rules regulating

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(d) S. 8 (1), Midwives Act, 1918; 11 Halsbury's Statutes 746.

the granting by the Board of diplomas to midwives presenting themselves for examination for diplomas in the teaching of midwifery, and also requiring midwives to attend, from time to time, a course of instruction approved by the Board. Courses of instruction are to be provided or arranged for by local supervising authorities for midwives practising in their areas. It is anticipated that such midwives will be required to attend a refresher course of four weeks' duration, residential in character, every seven years. [358]

**The Organisation of Midwifery Practice.**—After the Act of 1902 was passed, anxiety arose that the training and examination requirements of the Central Midwives Board would lead to a dearth of midwives in the country, and a departmental committee was appointed in 1908 to report on the working of the Act, with particular reference to supply. This committee reported in 1909 that the general supply of midwives was likely to be adequate and that any dearth which might arise in any locality would result from faulty organisation and distribution rather than from any want of approved midwives in the country. This committee, however, did recommend that in fixing the standard of training and examination due regard should be had to the needs of the country with respect to supply. Despite the increased requirements with regard to training and examination during the past thirty years, the number of midwives qualifying has constantly increased. In towns and large urban districts it has been found that midwives in private practice could usually earn a living. In country places this was more difficult, and district nursing associations devoted themselves to the supply of salaried midwives for the districts which they served. The district nursing associations drew their funds from voluntary subscriptions and from fees paid for the services of the midwife or nurse, and, although many local authorities did in fact subscribe to these associations, others were content with carrying out their statutory duties. The position was investigated in 1984 and 1985 by a committee called "The Joint Council of Midwifery" under the chairmanship of the Earl of Athlone, which recommended a salaried service of midwives for which local authorities should be responsible, even though the service was provided by voluntary associations.

The recommendations of the Joint Council of Midwifery formed the basis of the Act of 1936. Briefly, this Act requires every local supervising authority to secure, by making arrangements with welfare councils or voluntary organisations, or by themselves employing midwives, that the number of whole-time salaried certified midwives available is adequate for the needs of their area, not only when they act as midwives, but when they act as maternity nurses. "Welfare councils" under the Act, are councils, not local supervising authorities, who have established a maternity and child welfare committee under the Maternity and Child Welfare Act, 1918, and "voluntary organisations" are organisations substantially supported by voluntary contributions. Local supervising authorities are required to submit proposals under the Act to the Minister, and welfare councils and voluntary organisations may make representations to the Minister in respect to the proposals submitted by the authority. [359]

The Act provides that all appointments by an authority of midwives under the Act shall be advertised, special notices being sent to midwives who have given notice of an intention to practise in the area. Such midwives must be engaged as whole-time officers (not necessarily

whole-time midwives), and if a superannuation scheme is in operation in the area may be allowed to reckon any period not exceeding in the aggregate ten years of practice as midwives, before entering the service of the local authority, for purposes of pension. The authority are to fix a scale of fees to be charged for the services of their midwives, either as midwives or maternity nurses, and are given powers of recovery. Local supervising authorities are also required to pay compensation to certain midwives who may cease practice. This applies in two cases, first, where a midwife who between the beginning of 1935 and the eighteenth day of March, 1936, has given notice of intention to practise, within three years of the commencement of the Act surrenders her certificate intimating that she does not intend to practise further; and secondly, where a midwife who has given notice of intention to practise on or after the first day of January, 1936, is by reason of age or infirmity of mind or body, in the opinion of the authority incapable of performing the duties of a midwife, and is required by written notice to surrender her certificate. In the first case, the retirement is at the option of the midwife, and the compensation is fixed at three times the average net annual value of her emoluments for her last three years in practice, or the period during which she has practised as a midwife or maternity nurse, whichever is the less. In the second case, the retirement of the midwife is compulsory, though she has a right of appeal to the Minister of Health within one month. In this case, the amount of compensation to be paid by the local authority is five times the net annual emoluments of her practice as last mentioned. A midwife is entitled to appeal to the Minister if she feels aggrieved with respect to her compensation. The local supervising authority may pay the compensation either as a lump sum or (if they decide that it is in her interest) in the purchase of an annuity to the midwife terminating at her death or when she attains the age of seventy. A midwife who surrenders her certificate under these provisions may no longer act as a nurse on a woman in childbirth until ten days thereafter for remuneration, and her name may not be restored to the roll.

The other changes introduced by the Act of 1936 are referred to in other parts of this article. [360]

**Financial Considerations.**—Material additional expenditure devolves upon local authorities by the passing of the Midwives Act, 1936, and increased contributions out of moneys provided by Parliament are therefore provided both for local supervising authorities and for local authorities who are welfare councils (see above) by sect. 4 of the Act. This section and the first schedule contain detailed provisions, belonging rather to the sphere of local finance than to the subject of this article, for they relate the new contributions to the block grant under the L.G.A., 1929.

A comprehensive circular explaining the Midwives Act, 1936 (circular 1569), was sent from the M. of H. to local supervising authorities on September 18, 1936, and has been placed on sale (e). [361]

**London.**—The Midwives Acts apply in London. That portion of sect. 8 of the Act of 1902 (appointment of a committee for the purposes of the Acts) which was repealed (except as to London) by the L.G.A., 1933, was also repealed as to London by the L.C.C. (General Powers) Act, 1934, which confers on the county council a general power of delegation to committees. [362]

(e) *Id.*, from H.M. Stationery Office, Kingsway, London, W.C.2, or any bookseller.

## MILITARY LANDS

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*See also titles :*

ACQUISITION OF LAND (OTHER THAN COMPULSORY);	DIVERSION AND STOPPING-UP OF HIGHWAYS.
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**Introductory.**—In this title, the term “service departments” covers the War Office and the Air Ministry, and the term “associations” is used to cover Territorial Army Associations, Auxiliary Air Force Associations and County Joint Associations.

Service departments (and associations acting under the directions of a service department) are charged with the defence of the realm, and in the execution of this function are of necessity exempt from the provisions of Acts of Parliament, except in so far as they are bound by an Act conferring on them statutory powers or by express provisions in particular Acts.

The practice of service departments and associations with regard to matters which affect local authorities is dealt with in this title. [368]

**Acquisition of Land by Agreement.**—Service departments have full powers under the Defence Acts, 1842 to 1935 (a), and the Military Lands Acts, 1892 to 1903 (b), to acquire by agreement land, or any interest in land, required for their purposes. Such lands are held by the respective service department or association on behalf of His Majesty and are entitled to Crown exemption. Local authorities who wish to purchase or take on lease any such land for their own purposes can do so only by agreement with the particular service department or association concerned on terms which safeguard all military interests.

A county or borough council may, at the request of one or more Territorial Army Associations, purchase and hold land on behalf of the Associations for military purposes under sect. 1 (3) of the Military Lands Act, 1892, as adapted by S.R. & O., 1912, No. 1814. The provisions of sects. 4, 6 of the Act of 1892 as to the payment of expenses and borrowing were repealed by the L.G.A., 1933, and replaced by

(a) 3 Halsbury's Statutes 467—502 ; 28 Halsbury's Statutes 29.

(b) 17 Halsbury's Statutes 574—600.

sects. 181, 185, 195 of that Act (c). Any land so acquired may be leased for not more than ninety-nine years to an association, for military purposes, under sect. 1 (1) of the Military Lands Act, 1900. [364]

Land may also be hired by agreement by a county or borough council under sect. 1 of the Military Lands Act, 1903 (d), for not less than twenty-one years, at the request of one or more of the Territorial Army Associations, and may be leased to an association similarly to land purchased.

A county or borough council may contribute under sect. 1 (1) of the Act of 1903 towards the expenses of another council in the purchase or hire of land, and may borrow for the purpose, so far as the expenses are in the nature of capital expenses.

Land acquired by a county or borough council may be let by the council under sect. 8 of the Act of 1892 in any manner which is consistent with its use for military purposes. [365]

**Compulsory Purchase of Land.**—Service departments have, under sect. 23 of the Defence Act, 1842 (e), power to acquire compulsorily by purchase or lease any land required for their purposes, subject to the necessity or expediency for taking the lands being first certified by the lord lieutenant or by two deputy lieutenants of the county in which the lands are situated and to the grant of a warrant by two Commissioners of the Treasury (f). The use for barracks of land taken compulsorily was prohibited by a proviso to sect. 19 of the Act, but the proviso has recently been repealed by the Defence (Barracks) Act, 1985 (g).

Service departments and associations have, under the Military Lands Acts, 1892 to 1903, power to acquire compulsorily by purchase any land or interest in land required for their purposes, subject to compliance with the formalities laid down by sect. 2 of the Act of 1892 (h). These can be summarised as: (1) the holding of a local inquiry; (2) the making of a provisional order; and (3) the passing by Parliament of an Act to confirm the provisional order.

Land belonging to a local authority can be acquired by a service department under either the Defence Acts or the Military Lands Acts and by an association under the Military Lands Acts notwithstanding the purposes for which the local authority hold the land.

A local authority cannot exercise compulsory powers of purchase against a service department or association.

Land may be purchased compulsorily by a county or borough council for purposes indicated *supra* by means of a provisional order made by the Secretary of State under sect. 2 (9) of the Military Lands Act, 1892 (i), and confirmed by Act of Parliament. [366]

**Bye-Laws.**—Service departments have power under sect. 14 (1) of the Military Lands Act, 1892 (k), to make bye-laws for regulating the use of land under the management of a service department or vested in an association for the purposes to which it is appropriated

(c) 26 Halsbury's Statutes 405, 407, 412.

(d) 17 Halsbury's Statutes 600.

(e) 3 Halsbury's Statutes 476.

(f) See the Treasury Instruments (Signature) Act, 1840; 3 Halsbury's Statutes 304.

(g) 25 & 26 Geo. 5, c. 26.

(h) 17 Halsbury's Statutes 575.

(i) *Ibid.*, 577.

(k) *Ibid.*, 581.

and for securing the public against danger arising from the use. All intrusion on such land and all obstruction of its use may be prohibited. No bye-laws made under this power can take away or prejudicially affect any right of common. As indicated *post*, on p. 177, any bye-law imposing restrictions on the free use by the public of a highway can only be made with the consent of the highway authority for the district in which the highway to be restricted is situate.

Bye-laws can be made allowing the public to use the land to which the bye-laws relate when it is not being used for military purposes. In such a case, the bye-laws may also under sect. 14 (2) provide for the government of the land when so used by the public, including the preservation of order and good conduct, the prevention of nuisances, obstructions, encampments and encroachments. They may also provide for the protection of the land or anything growing or erected thereon and for the prevention of anything interfering with its orderly use by the public for the purpose permitted by the bye-laws.

Provision is also made in suitable cases for the imposition of restrictions on the speed of motor vehicles on roads which are the private property of a service department or association but to which the public normally have access. [307]

Apart from special cases bye-laws made by a service department are in one of two standard forms, namely (1) camp bye-laws; or (2) range bye-laws—rifle, artillery or bombing. Camp bye-laws are mainly "good behaviour" regulations, and do not as a rule require the consent of any local authority. Range bye-laws are more stringent in the interests of public safety and in most cases require the consent of the highway authority to the temporary closure or diversion of public highways.

Before a bye-law becomes operative, notice of it must be given locally. This is normally done by advertisement in the local newspapers, and by posting up notices in appropriate places in the district. Objection may be made to the proposed bye-law and any objection must be considered by the service department (sect. 17). When a bye-law is promulgated, the area affected and the terms of the bye-law must be published in such manner as to make it known to all persons in the locality. Copies of the bye-law are usually posted in appropriate places in the locality.

All the bye-laws made by service departments are enforced by officers nominated in the bye-laws and by the military and air force police. Powers of arrest without a warrant are given by sect. 17 (2) of the Act for the purpose of bringing offenders before a court of summary jurisdiction. A penalty not exceeding £5 may be imposed by the court. [368]

In addition to the power of making bye-laws to regulate and control land, power is given by sect. 2 (2) of the Military Lands Act, 1900 (1), to control areas of water adjacent to land. These powers are used in connection with fixed batteries, rifle ranges, artillery ranges and bombing ranges which abut on water, the water area being used as the main danger area. Bye-laws affecting water areas can only be made with the consent of the Board of Trade who before giving consent to such bye-laws must cause them to be published locally and must receive and consider all objections made, holding if necessary a local inquiry (m).

(1) 17 Halsbury's Statutes 598.

(m) Act of 1900, s. 2 (2) (b), (3).

Such bye-laws often affect a local authority as representing the public by restricting temporarily access to the seashore, but the consent of the local authority is not required by the Act, and any objection by a local authority concerned must be communicated to the Board of Trade. [369]

**Diversion and Stopping-Up of Highways.**—Service departments have power under sects. 16, 17 of the Defence Act, 1842 (*n*), to stop up or divert a footpath or bridle road on land acquired, but if stopped up, an alternative footpath or bridle road must be made at such convenient distance from the way stopped up as is considered proper by the authority stopping up or diverting the way. Notice to any local authority or person is not required, but as a matter of practice local authorities are informed of the intention of the service department and notice boards are erected for the information of the public.

The War Office have power under sect. 40 of the Defence Act, 1860 (*o*), to stop up or divert any highway or way through any land taken under the powers conferred by the Act. No notice to any local authority or person is necessary. Lands acquired under this Act had to be scheduled by August 31, 1861. This was applied with modifications to the Royal Air Force by S.R. & O., 1918, No. 538. [370]

Service departments and associations have power under sect. 13 of the Military Lands Act, 1892 (*p*), to stop up or divert footpaths which cross or run inconveniently or dangerously near land which has been taken on lease under that Act. The provisions of the Highway Act, 1835, apply to any such stopping-up or diversion except that the certificate of the inspecting justices is conclusive in cases where it states that they have viewed the footpath to be stopped up or diverted and that the proposed new footpath is convenient to the public—*i.e.* it need not be nearer or more commodious. Service departments and associations also have power under sect. 16 (2) of the same Act to stop up or divert footpaths on land owned by a service department or association and used for military purposes. The procedure is the same as that prescribed by sect. 13.

No bye-law under sect. 14 of the Act of 1892 (see *ante*, p. 176), can interfere with any highway unless made with the consent of the highway authority for the district in which the highway is situate, but under sect. 16 (1) where it appears to the highway authority that any highway crosses or runs inconveniently or dangerously near to any land the use of which can be regulated by bye-laws under the Act, the highway authority may consent to a bye-law providing for the temporary diversion from time to time of the highway or for the restriction from time to time of its use.

The power of making bye-laws restricting temporarily the public user of highways is mainly exercised as regards land used as a rifle range, artillery range or bombing range. [371]

Two justices have power under sect. 3 of the Military Manœuvres Act, 1897 (*q*), to stop up public footpaths and roads other than county, main or parish roads for a maximum period of forty-eight hours, and to stop up county, main or parish roads for a maximum period of twelve hours.

(n) 3 Halsbury's Statutes 472, 473.

(p) 17 Halsbury's Statutes 531.

(o) *Ibid.*, 497.

(q) *Ibid.*, 593.



Closure of a footpath or a road not repairable by the highway authority cannot be effected unless an order is obtained from two justices for the county in which the footpath or road is situate. Closure of a county, main or parish road cannot be effected unless an order is obtained from at least two justices for the county, not being military officers in command of the forces, sitting in petty sessions, and at least seven days' notice of the intended application to justices must be published in a newspaper. These powers of 1897 can only be exercised for military requirements in carrying out manœuvres authorised in an area by an Order in Council made under sect. 1 of the Act.

In the past, special Acts have been passed to deal with the stopping-up and diversion of highways in particular districts. See for example the Aldershot Roads Acts, 1856 (*r*) and 1890 (*s*), Waltham Abbey Gunpowder Factory Act, 1889 (*t*), the Streissall Common Act, 1884 (*u*), the Netley Hospital Act, 1862 (*a*), and the Air Ministry (Croydon Aerodrome Extension) Act, 1925 (*b*). [372]

**Repair of Roads.**—Service departments and associations sometimes require for their own purposes that a public highway shall be made up and maintained to a standard higher than that which the highway authority consider necessary for the normal traffic of the district. No powers are available for enforcing these requirements and such matters have to be adjusted by agreement between the service department or association and the highway authority concerned. In some cases the service department or association make a grant to the highway authority, and in others the highway authority delegate to the service department or association the liability for maintaining the road, paying to the service department or association an annual sum based on the average yearly cost of maintaining the road to the standard necessary for the normal traffic of the district.

No liability is admitted by service departments and associations for damage done to highways by extraordinary military traffic. Compensation is, however, paid to highway authorities in proper cases subject to the amount being certified by the Divisional Road Engineer of the M. of T.

Highway authorities are entitled to claim compensation under sect. 6 of the Military Manœuvres Act, 1897 (*c*), for damage done to roads by the carrying out of military manœuvres authorised by Order in Council under s. 1 of that Act, provided such claims are submitted in accordance with regulations made under the Act. Claims if not agreed are referred to arbitration as provided by s. 6 (4) of the Act. [373]

**Application of the P.H.As.**—Sect. 327 (2) of the P.H.A., 1875 (*d*), provides that nothing in that Act shall be construed to authorise any local authority to disturb or interfere with any lands or other property vested in the Secretary of State for War, without his consent in writing. In addition sect. 13 of the P.H.A. Amendment Act, 1907 (*e*), provides that nothing in that Act affects prejudicially any estate, right, power, privilege or exemption of the Crown, and by sect. 2 (1) the Act is to be construed as one with the P.H.As., that is to say, the Act of 1875 and amending Acts. It has been decided that building bye-laws

(*r*) 19 & 20 Vict. c. 66.

(*t*) 52 & 53 Vict. c. xxiii.

(*a*) 25 & 26 Vict. c. 16.

(*e*) 17 Halsbury's Statutes 504.

(*b*) *Ibid.*, 914.

(*s*) 53 & 54 Vict. c. ccix.

(*u*) 47 & 48 Vict. c. ccix.

(*b*) 15 & 16 Geo. 5, c. xviii.

(*d*) 13 Halsbury's Statutes 750.

made under sect. 157 of the Act of 1875 did not extend to a prison to be erected (*f*), and that land acquired and occupied for military purposes is exempt from contributing under sect. 150 of the Act to the cost of making up a private street (*g*). The provisions cited are not repealed by the P.H.A., 1936, and are still applicable to the unrepealed portions of the P.H. Acts. The P.H.A., 1936, makes special provision enabling the appropriate authority (which includes the service departments) to agree to the application of any specified provisions of the 1936 Act to any specified property upon such terms as may be agreed. Such an agreement may with the approval of the Treasury contain provisions of a financial character. Except in pursuance of such an agreement the provisions of the Act will not apply to Crown property or property belonging to a Government department or held in trust for His Majesty for purposes of a Government department (*h*). [374]

**Building Bye-Laws.**—Apart from the general exemption conferred on the Crown by the P.H.A., 1936, building bye-laws often expressly exempt from their provisions any building in His Majesty's possession, or employed or intended to be employed for His Majesty's use or service. But the military authorities enjoin on officers responsible for new building that they should acquaint themselves with the bye-laws and regulations of the local authority and comply with them, so far as possible without sacrifice of essential military interests. [375]

**Building Lines and Improvement Lines.**—Service departments and associations are not bound by a building line prescribed by a local authority under sect. 5 of the Roads Improvement Act, 1925 (*i*), or an improvement line prescribed under sect. 83 of the P.H.A., 1925 (*k*), in respect of their property. It is, however, the policy of service departments and associations to comply with the wishes of local authorities in these matters when erecting new buildings, so far as this can be done without sacrifice of essential military interests.

Road widenings effected under any statutory power cannot be carried out in so far as they affect property belonging to or in the occupation of a service department or association except by agreement with the service department or association concerned. [376]

**Private Street Works.**—As indicated *supra*, service departments and associations are exempt from private street works charges imposed under sect. 150 of the P.H.A., 1875 (*l*), nor are they liable to similar charges under the Private Street Works Act, 1892 (*m*). Making up charges cannot therefore be recovered from service departments and associations in respect of properties belonging to them which front or abut on private streets made up by local authorities and taken over for future public maintenance under either of the above Acts.

Contributions towards the cost of making up private streets prior to taking them over for public maintenance are made *ex gratia*, where the making up constitutes a definite military advantage. Contributions are limited to the estimated cash value of that advantage. [377]

(*f*) *Gorton Local Board v. Prison Commissioners* (1887), [1904] 2 K. B. 165 n ; 42 Digest 690, 1050. The relevant parts of s. 157 are repealed by the P.H.A., 1936, Sched. 3.

(*g*) *Hornsey U.D.C. v. Hennell*, [1902] 2 K. B. 73 ; 26 Digest 522, 2230.

(*h*) P.H.A., 1936, s. 34 ; 26 Halsbury's Statutes 535.

(*i*) 9 Halsbury's Statutes 223.

(*k*) 18 Halsbury's Statutes 1128.

(*l*) *Ibid.*, 686.

(*m*) 9 Halsbury's Statutes 193.

**Sewerage Systems.**—Service departments and associations when necessary construct their own sewerage systems and sewage disposal works. Sewers and drains so constructed did not vest in the local authority under sect. 13 of the P.H.A., 1875 (n), but remained private drains owned by the service department or association concerned even though private properties were connected thereto. Such sewers or sewage disposal works could only be declared public sewers under the P.H.A., 1936, or acquired by agreement with the department concerned (o). If, however, the sewer or drain or sewage disposal works is sold and passes into private ownership, a declaration of adoption under sect. 17 of the Act of 1906 may be made if the sewer, etc., was not completed before the 1st October, 1937. In the case of sewers, etc., completed before that date by a service department which do not come into private ownership until after that date, no declaration of adoption can be made, but they could be acquired by the local authority (*ibid.*, sect. 15 (1)).

If they pass into private ownership, an authority would still be able to exercise some measure of control if necessary. Disposal works no longer required by a service department or association could, if desired, be purchased by a local authority under the same section.

Except by agreement, local authorities cannot acquire rights to lay sewers and drains through land belonging to a service department or association. Such rights are in practice granted either on a temporary or permanent basis on terms which safeguard military interests. [878]

**Town Planning.**—The Crown is not bound by the Town and Country Planning Act, 1932, but sect. 33 of the Act (p) allows public departments to enter into agreements with town planning authorities subject to the approval of the Treasury, and service departments and associations are willing to enter into agreements with town planning authorities subject to certain essential conditions.

An association is not a "public department," but association land is always under the control of a service department. Agreements in respect of association land are therefore made with the appropriate service department and the association jointly.

Inasmuch as service department and association properties are held for military and defence purposes, a town planning scheme can only provide for the ultimate control and development of the land when it is no longer required for these purposes. Until that time arrives, service departments and associations must retain the right to use their properties for any military purpose whatever, notwithstanding the provisions of a town planning scheme. It follows, therefore, that the compensation and betterment provisions of the Act must be deferred until such time as military properties are available for sale as surplus land. The foregoing matters can be provided for by agreement between the town planning authority and the service department or association concerned with the approval of the Treasury. [879]

**Ribbon Development.**—The Restriction of Ribbon Development Act, 1935 (g), does not bind the Crown, but sect. 10 of the Act contains a similar provision enabling Government departments, with the approval of the Treasury, to enter into agreements with highway authorities providing that land which is under their control, or is in their occupation or vested in them for public purposes or the public service, shall be subject to the restrictions contained in sects. 1 and 2 of the Act.

(n) 13 Halsbury's Statutes 631.

(o) P.H.A., 1936, s. 15 (1) (iii); 29 Halsbury's Statutes, 334.

(p) 25 Halsbury's Statutes 505.

(g) 28 Halsbury's Statutes 79.

Service departments and associations will in most cases be unable to enter into such agreements with highway authorities, but according to policy, officers responsible for new buildings and access roads have been instructed to consult highway authorities whenever siting new buildings adjacent to roads affected by the Act or making new access ways from such roads. Representations made by highway authorities are given every consideration but the ultimate decision must remain with the service department or association concerned. [380]

**Public Utility Undertakings.**—Gas, water and electricity undertakers act under statutory powers, but these do not bind the Crown. If therefore facilities are desired on, over or under land belonging to a service department or association, they can be obtained only by agreement with the service department or association concerned on such terms as safeguard military interests. [381]

**Rating Exemption.**—Property in the beneficial occupation of a service department or association is exempt from rates levied by a local authority. An *ex gratia* payment is usually made by the Treasury valuer in lieu of rates. This payment is based on an assessment approved by him. A territorial drill hall used for military purposes at which dances were held weekly to stimulate recruiting is exempt from rates (r). [382]

**Tramways.**—By the Military Tramways Act, 1887 (s), service departments are empowered to lay and maintain tramways. Such tramways are usually of the nature of a full-gauge railway or light railway.

Procedure is by way of provisional order made by the Minister of Transport under sect. 8 of the Act. If a petition against the order is presented, the order must be confirmed by Act of Parliament (sect. 10).

If the tramway runs along or crosses a public highway certain provisions of the Tramways Act, 1870, as to maintenance and repair of the road are applied by sect. 4 of the Act of 1887.

Local authorities may in certain cases apply to the Minister of Transport for a provisional order authorising them to use a military tramway in addition to the service department (sect. 11). [383]

**Local Acts.**—If a local Bill promoted by a local authority, public utility undertakers or other body seeks power to acquire property belonging to a service department or association, it is customary for the Treasury to arrange for the insertion in the Bill of a protective clause providing that nothing in the Act shall enable the promoters to acquire any property belonging to the service department or association affected, without the consent of the service department or association which it is authorised to give on such terms as it thinks fit.

It is also customary to arrange for the specific exemption of service departments and associations from certain provisions of a general nature contained in Bills promoted by local authorities, such as for example the clauses for the control of tents, vans and camping grounds often included in such Bills. This action is taken in order to make the position clear to all concerned and does not affect the general exemption of service departments and associations from local Acts.

In some cases it is considered desirable to insert in a local Act a specific Crown exemption clause, but this action is only taken on legal advice. [384]

(r) *Derby (Territorial Army Association) v. Derby (S.E. Area) Assessment Committee*, [1935] 2 K. B. 373; Digest Supp.

(s) 20 Halsbury's Statutes 36.

## MILITARY VOTERS

See LOCAL GOVERNMENT ELECTORS.

## MILK AND DAIRIES

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ADULTERATION OF FOOD ;	INFECTIOUS DISEASES ;
BUTTER, MARGARINE AND CHEESE ;	INSPECTORS OF FOOD AND DRUGS ;
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DISEASES OF ANIMALS ;	SAMPLING OF FOOD AND DRUGS ;
FOOD AND DRUGS ;	TUBERCULOSIS ;
FOOD AND DRUGS AUTHORITIES ;	UNSOUND FOOD ;
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### GENERAL

Acts and Regulations.—The statutory provisions affecting milk and dairies include :

The Food and Drugs (Adulteration) Act, 1928 ; the Sale of Milk Regulations, 1901 and 1912 ; the Milk and Dairies (Consolidation) Act, 1915 ; the Milk and Dairies Order, 1926 ; the Milk and Dairies (Amendment) Act, 1922 ; the Milk (Special Designations) Order,

1936; the Milk Act, 1934; the P.H.A., 1875 (sects. 116—119); the P.H.A. Amendment Act, 1907, sects. 53, 54; the P.H. (London) Act, 1936 (sects. 144, 185, 204, 206, 207); the Public Health (Condensed Milk) Regulations, 1923 and 1927; the Public Health (Dried Milk) Regulations, 1923 and 1927; the Public Health (Preservatives, etc., in Food) Regulations, 1925, 1926 and 1927; the Public Health (Prevention of Tuberculosis) Regulations, 1925; the Public Health (Imported Milk) Regulations, 1926; the Diseases of Animals Acts; the Tuberculosis Orders, 1925; the Infectious Disease (Prevention) Act, 1890 (especially sect. 4); and the Sale of Food (Weights and Measures) Act, 1926.

Further reference to these Acts and Orders is made in subsequent paragraphs. [385]

**Enforcing Authorities.**—(1) Food and drugs authorities (*a*) have the primary duty of enforcing the following statutes and regulations:

Food and Drugs (Adulteration) Act, 1928 (*b*), and the Sale of Milk Regulations (*c*).

Milk and Dairies (Amendment) Act, 1922, sect. 4 (*d*), and sect. 3 as altered by Milk Act, 1934, sect. 10 (*e*).

Public Health Regulations applying to condensed milk (*f*), dried milk (*g*) and preservatives (*h*).

(2) County and county borough councils are ordinarily responsible for the enforcement of:

Milk and Dairies (Consolidation) Act, 1915, sects. 3, 4 and 5 (*i*), and the Milk and Dairies Order, 1926, Part IV. (*k*) (dealing with the health and inspection of cattle).

(3) Local sanitary authorities enforce the following:

Milk and Dairies Order, 1926, except Part IV. (*k*); Milk and Dairies (Amendment) Act, 1922, sects. 2, 5 (*l*); P.H.A., except the regulations mentioned in (1) above; Public Health (Prevention of Tuberculosis) Regulations (*m*); Public Health (Imported Milk) Regulations (*n*); Infectious Disease (Prevention) Act, 1890 (*o*).

Local sanitary authorities also have some powers under the Acts mentioned in (1) and (2) above.

(4) Authorities for the purpose of the Diseases of Animals Acts administer the Tuberculosis Orders, 1925 (*p*).

(5) Weights and Measures Authorities (*q*) enforce the Sale of Food (Weights and Measures) Act, 1926 (*r*).

(a) See title **FOOD AND DRUGS AUTHORITIES**, Vol. VI., p. 128.

(b) 8 Halsbury's Statutes 884.

(c) 1901, S.R. & O., No. 657, and 1912, S.R. & O., No. 687.

(d) 8 Halsbury's Statutes 381.

(e) 27 Halsbury's Statutes 16.

(f) 1923, S.R. & O., No. 509, and 1927, S.R. & O., No. 1092. See title **CONDENSED MILK**, Vol. III., p. 463.

(g) 1923, S.R. & O., No. 1323, and 1927, No. 1003. See title **CONDENSED MILK**.

(h) 1925, S.R. & O., No. 775; 1926, No. 1557; 1927, No. 577. See title **PRESERVATIVES**.

(i) 8 Halsbury's Statutes 866.

(j) 1926, S.R. & O., No. 821.

(k) 8 Halsbury's Statutes 879, 881.

(l) 1925, S.R. & O., No. 757.

(m) 1926, S.R. & O., No. 820.

(n) 13 Halsbury's Statutes 816.

(o) 1925, S.R. & O., No. 681 and No. 781. See also 1931, S.R. & O., No. 828.

(p) See titles **WEIGHTS AND MEASURES**, and **COAL WEIGHING**, Vol. III., p. 251.

(r) 20 Halsbury's Statutes 419.

(6) Various classes of local authority have duties in connection with the administration of the Milk (Special Designations) Order, 1936 (*s*). The councils of counties and county boroughs are the licensing authorities with respect to the production of tuberculin-tested and accredited milk. Other licensing powers under the order are vested in local sanitary authorities.

It may be noted that in many instances administrative powers are not exclusive or invariable. Thus, a local sanitary authority, although not a food and drugs authority, may enforce the Food and Drugs (Adulteration) Act, 1928, (*t*), and sect. 5 of the Milk and Dairies (Consolidation) Act, 1915. Sect. 3 of the Milk and Dairies (Amendment) Act, 1922, may be enforced by any local authority which is a licensing authority for the purpose of that section. With respect to certain provisions, it is contemplated that there will be close co-operation and consultation between local authorities of different classes.

The M. of H. has power, by order, to direct that the council of a non-county borough which is a local authority for the Diseases of Animals Acts may exercise within the borough the powers and duties of a county council in the matter of stopping supplies of milk likely to cause tuberculosis, and of inspecting cattle suspected of yielding tuberculous milk (*u*). The Minister may also require local authorities to combine for the purpose of appointing veterinary inspectors of milch-cows (*a*). The Minister, after local inquiry, may transfer to a county council any powers and duties of a negligent sanitary authority under the Milk and Dairies (Consolidation) Act, 1915 (*b*), or any Act or order relating to milk and dairies. [386]

**Official Circulars to Local Authorities.**—The following publications will be found useful by officers of local authorities :

M. of H. Memo. 36/Foods, January, 1929 (procedure under Food and Drugs (Adulteration) Act, etc.); M. of A. Advisory Leaflet No. 29 (notes on circumstances affecting the quality of milk); M. of A. Bulletin No. 16, 1935 (variations in the composition of milk); M. of H. Circular 711, July, 1926 (Milk and Dairies Order and Public Health (Imported Milk) Regulations); M. of H. Circular 757, January, 1927 (Milk and Dairies Order); M. of H. Circular 615, August, 1925 (Public Health (Prevention of Tuberculosis) Regulations); M. of H. Report on Public Health and Medical Subjects No. 77, May, 1935 (The Supervision of Milk Pasteurising Plants); M. of H. Circular 1533 (Milk (Special Designations) Order, 1936); M. of H. Memo. 197/Foods, May, 1936 (sale of milk under special designations); M. of H. Revised Memo. 189/Foods, January, 1937 (bacteriological tests for graded milk). [387]

**Names and Descriptions Applied to Milk.**—Cows' milk is sold with various adjectival descriptions. "Sterilised," "homogenised," "nursery" and "humanised," in their application to milk, are trade terms unknown to the law. Sterilised milk implies that the milk, after bottling, has been heated to a temperature approaching boiling point. It will keep sweet, in a properly closed receptacle, for several

(s) 1936, S.R. & O., No. 356.

(t) *Worthington v. Kyme* (1905), 93 L. T. 546; 25 Digest 104, 275.

(u) Milk and Dairies (Amendment) Act, 1922, s. 11; 8 Halsbury's Statutes 883; and Milk and Dairies (Consolidation) Act, 1915, s. 18 (5), 19 (4); *ibid.*, 873, 875.

(a) S. 10; *ibid.*, 870.

(b) S. 18; *ibid.*, 871.

days. The word "homogenised" is generally understood to mean that the fat globules have been split up by a mechanical process and uniformly distributed throughout the milk. "Nursery milk" suggests, perhaps, that the dairyman has selected his richest and cleanest milk to be sold under that name. "Humanised milk" indicates that the composition of cows' milk has been altered so as to resemble more closely the milk of a human mother.

"Dried milk," "condensed milk" and "evaporated milk" are terms which denote that the milk has been deprived by heat of a greater or smaller proportion of the water (normally about 87 to 88 per cent.) usually present in fresh milk. Regulations under the P.H.A. define the conditions subject to which condensed milk and dried milk may be sold. "Evaporated milk" is nowhere defined, but the term indicates that the milk is more fluid than condensed milk. Evaporated milk usually contains from 7.5 to 9.0 per cent. of fat.

The terms "separated milk" and "skimmed milk" are associated in various statutory provisions applying to milk from which fat has been removed, but have not precisely the same connotation. "Separated milk" or "machine-skimmed milk" implies that virtually all milk-fat has been removed by a mechanical process, whereas "skimmed milk" suggests that a smaller proportion of fat has been removed by hand.

The special designations, dealt with by the Milk (Special Designations) Order, 1936 (c), are "tuberculin tested," "accredited" and "pasteurised." "Tuberculin tested milk" is milk from cows which have passed a veterinary examination and a tuberculin test; it is bottled on the farm or elsewhere; and it may be raw or pasteurised. If it is bottled on the farm, it may be described as "tuberculin tested milk (certified)"; and if pasteurised, it is described as "tuberculin tested milk (pasteurised)." "Accredited milk" is raw milk from cows which have passed a veterinary examination. It may be bottled on the farm or elsewhere and must satisfy the same bacteriological tests as raw tuberculin tested milk. "Pasteurised milk" is milk which has been retained at a temperature of 145° to 150° F. for at least thirty minutes and immediately cooled to a temperature of not more than 55° F., and does not contain more than 100,000 bacteria per millilitre. Conditions regulating the use of these special designations are explained *post*, pp. 198 *et seq.* [388]

#### PROVISIONS RELATING TO ADULTERATION, ETC.

**Adulteration.**—The majority of prosecutions arising from the sale of adulterated milk are brought under sect. 2 of the Food and Drugs (Adulteration) Act, 1928 (d), by officers of Food and Drugs Authorities (e) in respect of the sale of milk not of the nature, substance or quality demanded; under sect. 5 of that Act for the sale of milk from which some fat has been abstracted (f); or under sect. 30 for giving a false warranty to a purchaser of milk (g). Any such prosecution must be supported by the certificate of a public analyst, who in giving

(c) 1936, S.R. & O., No. 356.

(d) 8 Halsbury's Statutes 885.

(e) See title FOOD AND DRUGS AUTHORITIES, Vol. VI., p. 128.

(f) 8 Halsbury's Statutes 887.

(g) *Ibid.*, 903.



his certificate must have regard (h) to the Sale of Milk Regulations, 1901 (i), in the case of milk, and to the Sale of Milk Regulations, 1912 (k), in the case of skimmed or separated milk.

But the Act of 1928 is not the only statute dealing with the adulteration of milk, for under sect. 4 of the Milk and Dairies (Amendment) Act, 1922 (l), also enforceable by food and drugs authorities, it is an offence to add to milk intended for sale any skimmed or separated milk, water, any dried or condensed milk, or any fluid reconstituted therefrom, or to sell any milk so admixed. These offences may be proved without a public analyst's certificate and the Regulations of 1901 and 1912 do not apply. A prosecution for the sale of watered milk could be instituted under the Act of 1922 even though the milk contained more than 8.5 per cent. of solids other than fat, if the addition of water could be proved by the evidence of an eye-witness or by the application of special tests such as that depending on the freezing-point of the milk. A warranty is not a defence to proceedings under sect. 4 of the Act of 1922 (m). [389]

**Preservatives.**—Milk is deemed to have been rendered injurious to health or to be no longer of the substance and quality demanded if it contains any chemical preservative, for the provisions of the regulations referring to the preservation of food (n) are applied to sects. 1 and 2 of the Food and Drugs (Adulteration) Act, 1928 (o), and a prosecution could be instituted under either of those sections. The sale of preserved milk is also a breach of the regulations. Further, no preservative agent may be used for the cleansing of milk vessels nor for mechanical milkers and appliances unless all trace of it is removed before the milk is brought in contact with these appliances (p). [390]

**Colouring Matter.**—The addition of colouring matter to milk intended for sale, and the sale or offer or exposure for sale of artificially coloured milk, are offences under sect. 4 of the Milk and Dairies (Amendment) Act, 1922 (q), which is enforceable by the food and drugs authority, or could in some circumstances be dealt with under sect. 2 of the Act of 1928. [391]

**Composition of Milk.**—Milk must be the unaltered product of the cow and it is no offence to sell such genuine milk even if the proportion of fat or milk solids is less than the normal percentage (r). But if a sample contains less than 3 per cent. of fat or less than 8.5 per cent. of solids other than fat, it is to be presumed until the contrary is proved by evidence that the milk is not genuine (s). A similar presumption arises when skimmed or separated milk contains less than 8.7 per cent. of milk solids other than fat (t). If a deficiency of fat in a sample of milk arises from a failure to stir the milk in a churn or pan, the

(h) S. 7; 8 Halsbury's Statutes 880.

(i) 1901, S.R. & O., No. 637.

(k) 1912, S.R. & O., No. 687.

(l) 8 Halsbury's Statutes 881.

(m) *Reeman v. Knapp* (1925), 134 L. T. 224; Digest Supp.

(n) 1925, S.R. & O., No. 775. See title PRESERVATIVES.

(o) 8 Halsbury's Statutes 884.

(p) Art. 21, Milk and Dairies Order, 1926, S.R. & O., No. 821.

(q) 8 Halsbury's Statutes 881.

(r) *Hunt v. Richardson*, [1916] 2 K. B. 440; 25 Digest 128, 492, and *Williams v. Rees* (1918), 87 L. J. K. B. 630; 25 Digest 129, 501.

(s) Sale of Milk Regulations, S.R. & O., 1901, No. 637.

(t) Sale of Milk Regulations, S.R. & O., 1912, No. 687.

sample is not as given by the cows and the sender is liable to conviction (*u*). But it is no offence to sell milk which is deficient as the result of specially watery food consumed by the cows, or because of improper milking methods (*a*) or as a result of partially milking the cow and allowing a calf to draw the rich strippings (*b*).

There is no need for a sampling officer to ask for "new milk" or "whole milk." Unless the contrary is indicated an article sold as milk should be sweet and unadulterated.

For factors affecting the composition of genuine milk, reference should be made to the title ADULTERATION OF FOOD (*e*).

In order to rebut the presumption of adulteration, arising from a deficiency in fat or milk solids, the chain of evidence, proving that the milk is nevertheless genuine, must be positive and complete. It must cover the whole period between milking and the procuring of the sample (*d*). To rebut a defence that milk was sold as given by the cows, the prosecution may submit evidence that another sample, drawn from the same cows in similar conditions and at similar times within a very few days, was of average or superior quality (*e*). [892]

**Special Sampling Powers.**—Officers of local authorities have more extensive powers of sampling milk than with respect to other articles of food. They may procure a sample in course of delivery without first obtaining the consent of the purchaser or consignee (*f*); and indeed may take samples, within their own area, for chemical analysis or bacteriological examination, at any time while the milk is in transit on its way to the consumer (*g*). If an authorised officer of a local authority desires to have samples procured outside his area, he may by notice in writing require the M.O.H. or other authorised officer of a food and drugs authority to take samples at a dairy or in course of transit from the dairy to the area of the first-mentioned authority (*h*). It is then the duty of the officer who receives the notice to procure samples and forward them to the requisitioning officer. A certificate by the officer who has taken the sample that it has been duly divided into parts is sufficient evidence of compliance with the required procedure unless the defendant requires the sampling officer to be called. The samples will be deemed to have been taken in the area of the requisitioning officer, whose local authority is liable to defray the reasonable expenses incurred by the other authority on its behalf. The M. of H. has indicated that no charge should be made in respect of the salary of a whole-time sampling officer.

The main object of all these special sampling powers is to enable officers of local authorities to trace milk to its source. Provision is also made to enable a vendor of milk to safeguard his own interests. A purveyor from whom a sample has been procured may serve on the

(*u*) *Dyke v. Gower*, [1892] 1 Q. B. 220; 25 Digest 92, 174; and *Bridges v. Griffin*, [1925] 2 K. B. 233; 25 Digest 130, 508.

(*a*) *Wolenden v. McCulloch* (1905), 92 L. T. 857; 25 Digest 128, 498.

(*b*) *Grigg v. Smith* (1917), 87 L. J. K. B. 488; 25 Digest 120, 499.

(*c*) Vol. I, p. 126.

(*d*) *Kings v. Merris*, [1920] 3 K. B. 566; 25 Digest 130, 506; *Bowen v. Jones* (1917), 86 L. J. K. B. 802; 25 Digest 130, 506.

(*e*) *Wilkinson v. Clark*, [1916] 2 K. B. 636; 25 Digest 120, 503; *Smith v. Philpott*, [1920] 1 K. B. 222; 25 Digest 120, 504.

(*f*) Food and Drugs (Adulteration) Act, 1928, s. 16 (2); 8 Halsbury's Statutes 894.

(*g*) Milk and Dairies (Consolidation) Act, 1915, s. 8 (1); 8 Halsbury's Statutes 868. See also Food and Drugs (Adulteration) Act, 1928, Sched. II.; *ibid.*, 906.

(*h*) Milk and Dairies (Consolidation) Act, 1915, s. 8 (3); 8 Halsbury's Statutes 869.

local authority within sixty hours a notice requesting that another sample shall be procured as soon as practicable in course of transit or delivery to him from the seller or consignor (*i*). If the local authority receives such a notice and fails to act upon it, no proceedings may be taken against the purveyor in respect of the sample procured from him.

A cowkeeper may similarly ask the local authority to take samples from his cows (*k*). Samples taken immediately after milking should be marked "Appeal to Cow Sample" when sent to a public analyst (*l*). [393]

**Sampling Bottled Milk.**—A sampling officer desiring to obtain a sample of bottled milk from a barrow or vehicle in the street must buy the whole quantity in the bottle; for no person may open a bottle after it has left the vendor's premises and before delivery to a purchaser (*m*). An officer buying bottled milk—or indeed any milk—should see that there is uniform distribution of the milk fat throughout the parts into which he divides the sample. [394]

**Sampling from Different Receptacles.**—Inspectors often have occasion to procure samples of milk from various receptacles forming one consignment. It is permissible for a public analyst to report separately on each sample and for the sampling officer to lay an information in respect of each unsatisfactory sample (*n*). Or, an analyst may by calculation arrive at the average composition of the whole consignment, in which case a single information may be laid (*o*). [395]

**Milk in Sealed Churns.**—No order has been made in England and Wales requiring ordinary milk to be dispatched in sealed vessels, though the M. of H. has power, with the concurrence of the M. of A., to make such an order (*p*). In practice, churns, except those used for accredited and tuberculin-tested milk, are rarely sealed or locked. A milk dealer is not to be convicted of any offence connected with the sale of milk in respect of a sample taken after the milk has left his custody or control, if it is proved that the churn or receptacle was effectively sealed and closed when it left his custody and control, but was not so sealed and closed when it reached the person taking the sample (*q*). It is the practice of the railway companies to require that when milk is dispatched by rail in sealed churns, the churns shall have their tare weight marked on them, so that the quantity of milk conveyed can be ascertained by weighing the vessels. [396]

**Analysis of Samples.**—A sample of milk taken in course of transit or delivery at the request of a purveyor must be submitted to the public analyst to whom the original sample obtained from the purveyor is or was submitted. If proceedings are taken against the purveyor, a copy of the analyst's certificate relating to every sample taken in transit or delivery must be furnished to the purveyor and may then be admissible as evidence on the question whether the purveyor sold the

(i) Food and Drugs (Adulteration) Act, 1928, Sched. II. (2); 8 Halsbury's Statutes 900.

(j) *Ibid.*, Sched. II. (6); *ibid.*, 907.

(k) M. of H. Memo. 30/Foods, January, 1929.

(l) Act. 31 (2), Milk and Dairies Order, 1926; S.R. & O., No. 821.

(m) *Prest v. White*, [1901] 2 Q. B. 304; 25 Digest 102, 250.

(n) *Widdridge v. Ashton*, [1924] 1 K. B. 92; 25 Digest 75, 46.

(o) Milk and Dairies (Consolidation) Act, 1915, s. 1; 8 Halsbury's Statutes 864.

(q) Milk and Dairies (Amendment) Act, 1922, s. 9 (3); *ibid.*, 882.

milk in the same state as he purchased it. The local authority of the district where the first sample was procured may proceed against the consignor instead of, or in addition to, taking proceedings against the purveyor (*r*). [397]

**Warranties.**—The warranty provisions of the Food and Drugs (Adulteration) Act, 1928 (*s*), apply to milk, with the following variation. A milk vendor prosecuted under that Act may not set up the defence of warranty unless he has availed himself of the right, mentioned in an earlier paragraph of this title, to request the local authority, within sixty hours after the sample was procured from him, to take steps to obtain another sample in course of transit or delivery to him (*t*). If such a request has been duly served on the local authority, but is not acted upon by them, they are debarred from taking proceedings against the milk vendor.

Milk warranties have been the subject of numerous decisions in the Divisional Court (*u*). Many of those decisions seem inconsistent and not to be reconciled, but the following points are fairly clear. The warranty, which must be in writing, must be in the contract of sale or be stipulated for when that contract is made (*a*). Where a contract was simply for the supply of "new milk," a label purporting to warrant the milk to be pure was held to be valueless as a warranty (*b*). There must apparently be some evidence, not necessarily a label, to connect any particular consignment of milk with the warranty contained in the contract under which it was sold (*c*). A warranty expressly limited to the purposes of the Food and Drugs (Adulteration) Act may be valid (*d*). [398]

**Dirt in Milk.**—The presence of an excessive amount of dirt in milk is regarded by some as an offence under sect. 2 of the Act of 1928 (*e*), and prosecutions are sometimes instituted under that section when the analyst has certified that the milk contains a foreign ingredient, namely dirt in some form. But it must be considered doubtful whether such a prosecution may properly be instituted (*f*). [399]

**Labelling of Receptacles.**—Any person who in any highway or place of public resort sells milk from a vehicle or from a receptacle must have his name and address conspicuously inscribed on the vehicle or receptacle (*g*). Any person dispatching milk by road or rail must have the name and address of the owner permanently marked on the churn (*h*). Receptacles used for the conveyance of skimmed or

(*r*) Sched. II., Food and Drugs (Adulteration) Act, 1928; 8 Halsbury's Statutes 906.

(*s*) S. 29; *ibid.*, 902. See title FOOD AND DRUGS and the cases cited at pp. 122 *et seq.* of Vol. VI.

(*t*) S. 29 (2) (*c*); 8 Halsbury's Statutes 902.

(*u*) See title FOOD AND DRUGS, Vol. VI., pp. 122 *et seq.*

(*a*) *Jeynes v. Hindle*, [1921] 2 K. B. 581; 25 Digest 94, 191.

(*b*) *Dewey v. Faulkner*, [1923] 1 K. B. 815; 25 Digest 97, 217.

(*c*) *Draper v. Newnham* (1910), 102 L. T. 280; 25 Digest 96, 210, and *Evans v. Weatheritt*, [1907] 2 K. B. 80; 25 Digest 96, 209, in which many earlier decisions were reviewed.

(*d*) *Flowerlight v. Burrell*, [1913] 2 K. B. 362; 25 Digest 97, 215.

(*e*) 8 Halsbury's Statutes 885.

(*f*) *Kenny v. Cox* (1920), 89 L. J. K. B. 1258; 25 Digest 130, 509.

(*g*) S. 6, Milk and Dairies (Consolidation) Act, 1915; 8 Halsbury's Statutes 868. See *Crabtree v. Shelton* (1901), 70 L. J. K. B. 560; 25 Digest 131, 510.

(*h*) Art. 29, Milk and Dairies Order, 1926; S.R. & O., No. 821.

separated milk, or for containing such milk when exposed for sale, must be marked with the words "skimmed milk" or "separated milk," as the case may require, in large and legible type (*i*). Receptacles containing condensed skimmed milk or condensed separated milk must be similarly labelled "skimmed milk" or "machine skimmed milk" as the case may require (*k*). [400]

#### PROVISIONS RELATING TO CLEANLINESS AND WHOLESOMENESS

**Registration of Dairies and Dairy-men.**—Persons carrying on the trade of a cowkeeper or dairyman, and premises used as dairy farms, cowsheds or dairies must be severally registered with the local sanitary authority (*l*). The word "dairy" is comprehensively defined so as to include not only farms, cowsheds and shops, but also milk stores and places where vessels used for the sale of milk are kept by persons who have no premises (*m*). All farms from which milk is supplied for sale must be registered, but shops where milk is only sold for consumption on the premises are exempt, as are shops where milk is only sold in the closed receptacles in which it is received. But the keeper of such an exempted shop, if a seller of milk, is still a dairyman and must register himself (*n*). The M. of H. has indicated in a circular (*o*) that any farmer who keeps more cows than are required for the needs of his household should be registered though he may only sell a small proportion of the milk yielded by his cows. A purveyor of milk must effect registration with the local authority of each district in which he sells milk (*p*), except perhaps for an isolated sale in an area other than that in which he regularly trades (*q*).

The local authority has no discretion to refuse registration to applicants other than retailers, but may refuse or revoke the registration of a retailer if satisfied that danger to the public health is involved (*r*). In such a case, notice to appear and show cause, not less than seven days after the date of the notice, is to be served on the applicant. An appeal lies to a court of summary jurisdiction from an adverse decision of the local authority.

The intending occupier of a cowshed or dairy, not previously used for that purpose, is required to give one month's notice in writing to the local authority before using the premises (*s*). The local authority (if not a county borough council) is required to inform the county council of all registrations and alterations in the registers of cowkeepers and their premises. The object of this requirement is clear when it is realised that it is the county council (or county borough council) which is responsible for the administration of that part of the order which relates to the health and inspection of milch-cows.

(*i*) Art. 30; Milk and Dairies Order, 1926; S.R. & O., No. 821.

(*h*) Milk and Dairies (Consolidation) Act, 1915, s. 7; 8 Halsbury's Statutes 868. See also *French v. Card* (1909), 101 L. T. 428; 25 Digest 73, 25.

(*l*) Milk and Dairies Order, 1926; S.R. & O., No. 821.

(*m*) S. 16 (1), Milk and Dairies (Consolidation) Act, 1915; 8 Halsbury's Statutes 874.

(*n*) *Burrows v. Rapson* (1927), 25 L. G. R. 397; Digest Supp.

(*o*) Circular No. 757, June, 1927.

(*p*) *Easington R.D.C. v. Gibson* (1929), 142 L. T. 420; Digest Supp.

(*q*) *Emerton v. Hall* (1910), 102 L. T. 839; 25 Digest 126, 476.

(*r*) S. 2 (1), Milk and Dairies (Amendment) Act, 1922; 8 Halsbury's Statutes 879.

(*s*) Art. 7, Milk and Dairies Order, 1926; S.R. & O., No. 821.

The registration of a dairyman or of his premises may be revoked by any court before whom a registered purveyor of milk is convicted of any offence under an enactment relating to milk and dairies (*f*). [401]

**Sanitation and Cleanliness.**—The importance of the registration of cowsheds and dairies arises from the fact that local authorities are required to exercise close supervision over the conditions obtaining at such places. The precautions to be taken by dairymen and other persons handling milk by way of trade, are prescribed in great detail in the Milk and Dairies Order, 1926 (*u*), which, in Parts V. to VIII. (administered by local sanitary authorities) contains numerous provisions designed to secure cleanliness and hygienic conditions in cowsheds and dairies and to protect milk against infection and contamination at all stages of its production, conveyance and distribution. These provisions are too lengthy to be set out in full here. But it may be stated that the subjects dealt with in the Order include the lighting, ventilation, water-supply, cleansing and disinfection of cowsheds; the sanitary conditions of all places of storage for milk; the cleansing and protection of milk vessels and utensils; the cleanliness of processes of milking, and of persons engaged in that work; the cooling of milk; the protection of milk from dirt, dust, rain-water and unnecessary heat; the cleanliness of vehicles used for the conveyance of milk; and the opening of churns and bottles in transit.

The M. of H. has suggested that local authorities should act in consultation and co-operation with county agricultural education authorities, and that sanitary inspectors might usefully attend courses of instruction in clean milk production, the expenses being met by the local authorities (*a*).

It is a P.H.A. offence to expose or have in possession for sale unsound or unwholesome milk (*b*). [402]

**Offences and Defences.**—Non-compliance with the provisions of the Milk and Dairies Order, 1926, is an offence under the Milk and Dairies (Consolidation) Act, 1915, the procedure and penalty being prescribed by sect. 18 (*c*). An occupier of a dairy charged with such an offence may lay an information against a person whom he charges as the actual offender and prove that the offence was committed by such person without the knowledge or consent of the occupier and in spite of due diligence on the part of the occupier. If these facts be proved, the occupier is to be exempt from fine and the other person must be convicted (*d*). This method of defence is not available to a person summoned under the Milk and Dairies (Amendment) Act, 1922 (*e*), or the Food and Drugs (Adulteration) Act, 1928. But for an offence under the Act of 1922, the local authority must proceed in the first instance against the actual offender if satisfied that the occupier

(*f*) Milk and Dairies (Amendment) Act, 1922, s. 2 (*2*); 8 Halsbury's Statutes 880.

(*u*) 1926, S.R. & O., No. 821. See also P.H.A., 1925, s. 72; 13 Halsbury's Statutes 1148.

(*a*) Circular 757, January 1927.

(*b*) Ss. 116—119, P.H.A., 1875; 13 Halsbury's Statutes 672, 673. See title UNSOUND FOOD.

(*c*) 8 Halsbury's Statutes 872.

(*d*) *Ibid.*

(*e*) *Ibid.*, 879.

of the dairy had used due diligence and that his servant committed the offence without his knowledge, consent or connivance (*f*).

No proceedings under the Act of 1915 may be taken against any person unless at the time the sample was taken the milk was in his custody or control or was contained in a receptacle which had been sealed or closed in accordance with a Milk and Dairies Order (*g*). But no order requiring the use of sealed churns in England and Wales has been made. [408]

#### PROVISIONS RELATING TO INFECTIOUS DISEASE

**Tuberculous Milk.**—The M.O.H. of a county or sanitary authority may submit samples of milk as a matter of routine to test for tubercle bacilli (*h*), and the work is now usually regarded as a virtually necessary method of administering the powers of local authorities. It is the duty of the licensing authority for the purposes of the Milk (Special Designation) Order, 1936, to have bacteriological tests made of specially designated milk sold under licences granted by them (*i*). It is also the duty of the M.O.H. of a county or county borough to arrange adequately for the veterinary inspection of milch cattle, and the veterinary inspector may take samples of milk for examination (*k*). If tubercular infection of the milk supply is suspected by the M.O.H. of a sanitary authority, he must try to ascertain the source of supply and give notice to the M.O.H. of the county or county borough where the cows are kept. This officer must then have the cattle inspected and make other necessary investigations; and must send to the local M.O.H. copies of veterinary and bacteriological reports (*l*). In most areas, the local authority has power to require dairymen to furnish lists of their sources of supply (*m*).

When a cow is found to be giving tuberculous milk or showing definite clinical signs of tuberculosis, the local authority for the purposes of the Diseases of Animals Acts (*n*) arranges, after veterinary examination, for the slaughter of the animal and for payment of compensation to the owner in accordance with the Tuberculosis Order, 1925 (*o*). [404]

The council of a county or county borough, on the report of the M.O.H., may make an order stopping the supply of milk likely to cause tuberculosis (*p*). The dairyman has a right of appeal to a court of summary jurisdiction, and has a right to compensation unless the order is made in consequence of his default or neglect.

It is an offence under sect. 5 of the Act of 1915 (enforceable by councils of counties and county boroughs, though local sanitary authorities enjoy similar powers of enforcement) to sell tuberculous

(*f*) Milk and Dairies (Amendment) Act, 1922, s. 9 (2); 8 Halsbury's Statutes 882.

(*g*) Milk and Dairies (Consolidation) Act, 1915, s. 8 (2); *ibid.*, 869.

(*h*) Milk and Dairies (Consolidation) Act, 1915, s. 8 (1); *ibid.*, 868.

(*i*) See pp. 194, 195, *post*.

(*k*) Part IV., Milk and Dairies Order, 1926; S.R. & O., No. 821.

(*l*) S. 4, Milk and Dairies (Consolidation) Act, 1915; 8 Halsbury's Statutes 867.

(*m*) *I.e.*, where s. 53 of the P.H.A. Amendment Act, 1907 (18 Halsbury's Statutes 931) is in force.

(*n*) See Vol. IV., p. 394.

(*o*) S.R. & O., 1925, Nos. 681 and 781, and 1931, No. 828; see also Vol. IV., p. 410.

(*p*) Milk and Dairies (Consolidation) Act, 1915, s. 3 and Sched. I.; 8 Halsbury's Statutes 866, 870.

milk after receiving an order stopping supplies. And under sect. 5 of the Milk and Dairies (Amendment) Act, 1922 (enforceable by local sanitary authorities) it is an offence to sell, or offer or expose for sale, the milk of a cow suffering from tuberculosis of the udder if it is proved that the defendant knew or could by ordinary care have ascertained that the cow was suffering from the disease (*q*). It is also an offence to sell, or offer or expose for sale, for human consumption or for the manufacture of products for human consumption, the milk of any cow which has given tuberculous milk or is suffering from emaciation caused by tuberculosis, or from tuberculosis of the udder, or from acute inflammation of the udder or certain other specified diseases, if it is proved that the offender knew of, or could by ordinary care have ascertained, the disorder (*r*). The other specified diseases are acute mastitis, actinomycosis of the udder, anthrax, foot-and-mouth disease, suppuration of the udder (*s*), and, subject to provisos, any comatose condition, any septic condition of the uterus, and any infection of the udder or teats likely to convey disease (*t*). [405]

**Infectious Disease in Connection with Milk Supplies.**—There are a variety of provisions under which local authorities and their officers have powers to protect the public against the danger of infectious disease being caused by milk, as the result of infection in the milk or of the infectious condition of persons who may be engaged in handling milk or milk vessels. Under the Milk and Dairies Order, 1926 (*u*), which is everywhere in force, the M.O.H. of a local sanitary authority may, by notice in writing, forbid the sale of milk likely to cause infectious disease. He must be notified of infectious disease among persons employed in premises registered as dairies, and may forbid the employment thereof of any person if that employment is likely to lead to the spread of infectious disease.

Somewhat similar powers are possessed by a local sanitary authority in whose area Part IV. of the P.H.A. Amendment Act, 1907 (*x*), or the Infectious Disease (Prevention) Act, 1890 (*a*), is in force. (See Vol. VII., pp. 237—240.)

Further, no person who is aware that he is suffering from tuberculosis of the respiratory tract may enter on any employment in connection with a dairy which would involve the handling of milk or of vessels used for containing milk. The local authority, on the report of the M.O.H., may give written notice requiring discontinuance of such employment. An appeal lies to a court of summary jurisdiction (*b*). [406]

#### SPECIALLY DESIGNATED MILK

**Special Designations.**—A new order, entitled the Milk (Special Designations) Order, 1936 (*c*), was made by the M. of H. on April 13, 1936, in pursuance of the powers conferred on him by sect. 10 of the

(*q*) 8 Halsbury's Statutes 881.

(*r*) *Ibid.*, 868.

(*s*) Sched. II.; *ibid.*, 877.

(*t*) Art. 11, Milk and Dairies Order, 1926; S.R. & O., No. 821.

(*u*) Art. 18, S.R. & O., 1926, No. 821.

(*x*) 13 Halsbury's Statutes 930.

(*a*) *Ibid.*, 816.

(*b*) P.H. (Prevention of Tuberculosis) Regulations, 1925; S.R. & O., No. 757.

(*c*) 1936, S.R. & O., No. 356.

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Milk Act, 1934 (*d*), which replaced sect. 3 of the Milk and Dairies (Amendment) Act, 1922. This order, which operates from June 1, 1936, revokes earlier Orders of 1923 and 1934, and prescribes the conditions under which milk may be described by the special designations "tuberculin tested," "accredited" and "pasteurised." Broadly, but subject to important variations in matters of administration and of detail, "tuberculin tested" replaces the former designations "certified" and "grade A (tuberculin tested)," while "accredited" similarly replaces "grade A."

The designation "tuberculin tested" may only be applied to milk from cows which have been recently, and are regularly and frequently, examined by a veterinary surgeon and found to pass the prescribed tuberculin test. The cows must be kept isolated from all other cattle. The milk, which must not have been heated, unless the word "pasteurised" is added to its designation (see below), is to be supplied in containers of the prescribed kind, sealed and labelled as required by the order, and must comply with the prescribed bacteriological standard.

"Accredited" is a designation restricted to raw milk from cows which have been recently examined and approved by a veterinary surgeon. The cows must be kept apart from other cows in milk. Bacteriological standards have to be satisfied, and the milk, which may not be treated by heat, must be supplied in appropriate containers, duly sealed and labelled.

Milk sold as "pasteurised" must have been heated, once only, under the prescribed conditions and must satisfy a bacteriological test, but no veterinary examination of the cows is necessary.

"Tuberculin tested (pasteurised)" is a designation restricted to milk which is pasteurised after it has been obtained from an establishment licensed for the use of the designation "tuberculin tested" in respect to milk. This milk is required to satisfy a higher bacteriological standard than milk sold under the other special designations. [407]

**Bacteriological Testing.**—The M. of H. has issued a memorandum (*e*) giving the directions contemplated by the Milk (Special Designations) Order, 1936, for carrying out tests to ascertain whether milks entitled to be called "tuberculin tested," "accredited," or "pasteurised," comply with the prescribed standards for the bacterial content of such milks.

Pasteurised milk, whether "tuberculin tested" or not, must comply with a "plate-count" test.

In order to pass a new test, prescribed in the order and known as the methylene-blue reduction test, "tuberculin-tested" and "accredited" milk, when tested in accordance with the prescribed method, must not decolourise methylene blue within  $4\frac{1}{2}$  hours if the sample is taken between May 1 and October 31, or within  $5\frac{1}{2}$  hours if the sample is taken between November 1 and April 30. The new test is expected to simplify the work of local authorities responsible for the periodical examination of samples.

Memo. 139/Foods also explains how samples should be collected and dealt with. [407A]

(*d*) 27 Halsbury's Statutes 16.

(*e*) Revised Memo. 139/Foods (Bacteriological Tests for Graded Milk), January, 1936.

**Licensing of Producers and Dealers.**—Persons who produce or deal in milk to which the above-mentioned special designations are applied must be licensed. There are the following kinds of licences :

- (1) to produce milk designated as "tuberculin-tested" or as "accredited" ;
- (2) to bottle milk designated as "tuberculin-tested" or as "accredited" (unless the bottler is the licensed producer) ;
- (3) to pasteurise milk designated as "pasteurised" ;
- (4) to sell by retail milk designated as "tuberculin-tested," or as "accredited," or as "pasteurised" (a supplementary licence being required by a dealer who sells in a district other than that in which his premises are situated).

It is to be noted that a dealer selling milk as "tuberculin tested milk (pasteurised)" requires a licence to sell tuberculin tested milk and also a licence to sell pasteurised milk.

It should be understood that licences are not required for the sale of milk which has been pasteurised unless the designation "pasteurised milk" is used. Vast quantities of milk which has been pasteurised are legitimately sold simply as "milk" by unlicensed persons. [408]

**Licensing Authorities.**—The local authorities authorised to grant licences to producers of "tuberculin tested" and "accredited" milk outside London, are the councils of counties and county boroughs. The licensing authorities for bottlers of and dealers in specially designated milk who are not producers, and also for persons who pasteurise milk or tuberculin-tested milk, are the local sanitary authorities. [409]

**Licences.**—Licences must be applied for in writing. Applications must be accompanied by the prescribed particulars and in the case of "tuberculin tested" and "accredited" milk by a veterinary surgeon's certificate, except that where a herd of cows is registered with the M. of A. as an "attested herd" the conditions applicable to attested herds and relating to tuberculin tests under a special scheme of that Ministry apply instead of the conditions set out in Part I. A (1) (a) of the Third Schedule to the Milk (Special Designations) Order. The M. of A. has arranged to inform the licensing authority of the results of the tuberculin tests of such "attested herds" as are in the possession of persons who are licensed to produce "tuberculin tested" milk. These alternative arrangements are to be regarded as temporary.

Licences authorise the use of the special designations in relation only to milk sold at or from the establishment mentioned in the licence and (except in the case of milk sold by wholesale) only within the area of the licensing authority. But supplementary licences may be issued in relation to milk sold at another establishment. A dealer must have a separate licence for each shop at which specially designated milk is sold (f). Licencees are to be in the prescribed form and are to expire on December 31 in any year. A licence authorising a producer to use the designation "tuberculin tested" entitles him to use the designation "accredited" in connection with milk to which that licence applies. Before granting any licence, the authority should

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(f) *United Dairies (London), Ltd. v. Hackney Borough Council* (1934), 151 L. T. 56 ; Digest Supp.

consult their M.O.H. and must be satisfied that the applicant's arrangements are in all respects such as to comply not only with the conditions applying to the grant of the licence but also with the requirements of all Acts and orders relating to milk and dairies. [410]

The M. of H. has intimated that local authorities, before granting licences for the production of tuberculin-tested and accredited milk, should have regard, not only to the results of bacteriological tests of samples, but also to methods of milking and to the sterilisation of dairy utensils, in which connection the requirements of the Milk and Dairies Order, 1926, may properly be taken as a minimum. Local sanitary authorities should be consulted on such matters by county authorities, and all licensing authorities should use their discretion in deciding that further requirements are necessary in order to ensure that the conditions of the licence shall be regularly complied with. All utensils and milk containers should be sterilised by steam.

It is further suggested that local authorities which grant licences to bottlers of specially designated milk should arrange for frequent sampling and bacteriological testing of the milk on sale by retail and that these samples can conveniently be taken by officers of the authority which has granted the retailer's licence. Similarly, frequent inspection should be made by officers of licensing authorities, under the direction of the M.O.H., with regard to the continuous efficiency of milk-pasteurising methods.

For further details, reference should be made to circular 1538 dated April 24, 1936, and Memo. 197/Foods, issued by the M. of H.

The general conditions attaching to the grant of licences are as under :

All specially designated milk must be produced, stored, treated and distributed by processes and under arrangements which satisfy the licensing authority that the conditions of the licence are being and will be complied with. In particular, the holder of the licence is required to keep the specially designated milk separate at all stages, except when it is in sealed containers, from all other milk; to keep accurate records of the quantities of milk produced, purchased and sold, including the names and addresses of vendors and of purchasers other than consumers; and to permit authorised officers of the licensing authority to inspect records and processes of production, storage and treatment and to take samples of the milk without payment (g).

The Third Schedule to the Order sets out the particular conditions applying in respect of the various kinds of specially designated milk. These are too lengthy to be enumerated or summarised here.

The fees payable to licensing authorities are set out in the Fourth Schedule to the Order, but an authority may dispense with the payment of fees for all licences or any class of licence, and may reduce the fee for a period less than one year. [411]

**Suspension, Revocation and Refusal of Licences.**—A licensing authority desiring to suspend or revoke a licence, on the ground of a breach of its conditions, must serve a notice on the holder and give him a reasonable opportunity to make representations on the matter. An appeal against suspension, revocation or refusal lies to the M. of H. and is to be made to him within seven days of the receipt of the notification of the decision of the licensing authority. [412]

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(g) Milk (Special Designations) Order, 1936; S.R. & O., No. 356, Sched. II.

**Unlawful Use of Special Designations.**—An offence is committed if any person, for the purpose of the sale or advertisement of milk, uses one of the special designations in a manner calculated to suggest that it refers to that milk, unless there is in force a licence authorising the use of the designation in connection with the milk in question. Similarly, it is forbidden to refer to such milk by any description, not being one of the special designations, calculated to suggest falsely that the cows which gave the milk are free from tuberculosis or other disease, or that the milk has been tested, approved or graded by any competent person (*h*). This provision may be enforced either by the local authority authorised to grant licences or by the food and drugs authority. The M. of H. has intimated that in his opinion, proceedings would most conveniently be taken by the local authority having licensing powers (*i*). [418]

#### MISCELLANEOUS PROVISIONS

**Imported Milk.**—It is an offence to import into the United Kingdom any adulterated or impoverished milk or cream, except in receptacles conspicuously marked with an indication of the fact that the article has been so treated (*k*).

This provision is enforced by the Customs and Excise Department. The M. of H. has made regulations to protect the public health from danger arising from the importation of milk (*l*). These regulations prescribe that the milk shall be free from tubercle bacilli and shall not contain more than 100,000 bacteria per cubic centimetre. They are to be enforced by Port Health Authorities and councils of boroughs, urban districts, and rural districts, with whom persons importing milk into those areas from outside the British Islands must be registered. The authorities have special powers, prescribed in the regulations, to remove from their registers consignees of unsatisfactory imported milk, subject to appeal by the dairyman to a court of summary jurisdiction, whence either party may appeal to a court of quarter sessions. In practice, the importation of liquid fresh milk rarely takes place. [414]

**Milk Depots and Laboratories.**—A local sanitary authority may, with the approval of the M. of H. and subject to such conditions as he may impose, establish and maintain depots for the sale at not less than cost price of milk specially prepared for consumption by infants under two years of age. In this connection, milk may be purchased and prepared as necessary, and laboratories may be provided (*m*). Irrespective of the provision of such depots, a local authority may be required by the M. of H. to provide, or arrange for the provision of, such facilities for bacteriological or other examination of milk as the Minister may approve (*n*). [415]

(*h*) Milk Act, 1934, s. 10; 27 Halsbury's Statutes 16, which now forms part of the Milk and Dairies (Amendment) Act, 1922; 8 Halsbury's Statutes 870.

(*i*) M. of H. Circular 356, December, 1922.

(*k*) Food and Drugs (Adulteration) Act, 1928, s. 12 (1); 8 Halsbury's Statutes 891.

(*l*) Public Health (Imported Milk) Regulations, 1926; S.R. & O., No. 320.

(*m*) Milk and Dairies (Consolidation) Act, 1915, s. 12; 8 Halsbury's Statutes 870.

(*n*) S. 10; *ibid.*

**"Milk in Schools" Scheme.**—The Milk Marketing Board, set up at the instance of the M. of A. & F. under the Agricultural Marketing Act, 1931 (o), and Orders thereunder (p), have in force a scheme known as the "Milk in Schools Scheme," the main object of which is to ensure, through arrangements voluntarily organised by teachers, that large numbers of school children shall have facilities at schools or other approved centres for obtaining milk, in bottles containing one-third of a pint, at the reduced price of  $\frac{3}{4}$ d. per bottle. Straws for the children's use are also provided. The scheme, which has been very widely adopted, is made possible by a rebate made by the Milk Marketing Board to the suppliers of the milk, subject to certain conditions. Where local authorities themselves produce the milk, they may qualify for the rebate in the same way as other suppliers, provided that they are registered with the Board under the Milk Marketing Board scheme.

All public elementary schools, secondary schools, nursery schools, junior technical schools, special schools, junior commercial schools and the like, as well as all full-time schools, or courses for children or young persons recognised for grant by the Board of Education, or elementary schools recognised by that Board as efficient, are included in the scope of the scheme. The usual method of procedure is that the arrangements for the supply of the milk are made by the local education authority or the head teacher of the school or centre with the prospective suppliers. The head teacher, or other person approved by the authority of the school or centre, is expected to certify that the milk has been actually consumed on the premises and to initial the form of return of daily deliveries. The source and quality of the milk must have been previously approved, in the case of the schools of a local education authority, by the M.O.H. In a county council's school, the county M.O.H. is expected to consult the M.O.H. of the local sanitary authority before giving his approval. In the great majority of districts, the M.O.H. insists in practice, as a condition of his approval, that all milk supplied under the scheme must be pasteurised and be designated as "pasteurised milk." The local sanitary authority should, and frequently does, take steps to ensure that such milk complies with the appropriate standards of bacteriological purity and cleanliness, and that the conditions of its production, pasteurisation and distribution are satisfactory.

The food and drugs authority may take samples for chemical analysis and the weights and measures authority may test the measure of the milk contained in the bottles.

The milk in schools scheme does not apply to "tuberculin tested milk" and if an education authority desires such milk to be supplied to schools the arrangements must be made independently of the Milk Marketing Board's scheme.

For the supply of milk, free or at reduced prices, through maternity and child welfare centres, see Vol. VIII., pp. 871 *et seq.* [416]

**Sale by Measure.**—The following are offences under the Sale of Food (Weights and Measures) Act, 1926 :

The sale of milk of less measure than is purported to be sold (q) ; misrepresentation of the measure of milk exposed or offered for sale (r) ;

(o) 24 Halsbury's Statutes 11.

(p) S.R. & O., 1933, Nos. 683, 789 ; S.R. & O., 1934, No. 344.

(q) S. 1 ; 20 Halsbury's Statutes 419. See title WEIGHTS AND MEASURES.

(r) S. 3 ; *ibid.*, 419.

sale, or possession for sale or for delivery on sale, of any prepacked milk, including separated, skimmed, specially designated or processed fluid milk, in quantities other than half a pint or multiples thereof, unless the milk is for consumption on the vendor's premises or the sale is of petty amounts such as pennyworths (s). The exemption in favour of sale in petty amounts from the necessity for sale in the prescribed quantities of half a pint or multiples thereof does not apply to the offences of selling milk of short measure or misrepresenting the quantity offered for sale. When a dairyman purports to supply (e.g. to schools) bottles containing one-third of a pint of milk, full measure must be supplied.

The questions whether milk sold in bottles must have been measured by a stamped and accurate measure or measuring instrument, and whether, when these appliances are not used, the bottles must be regarded as measures are not free from difficulty. The Board of Trade have not made any regulations providing for the verification of milk bottles as measures, and local authorities generally have refrained from insisting on the use of stamped measuring appliances for this purpose. The Board of Trade have, however, approved of a special type of glass measuring bottle for use by inspectors as a standard measure for testing the quantity of milk in a bottle. [417]

#### LONDON

The Milk and Dairies (Consolidation) Act, 1915, the Milk and Dairies (Amendment) Act, 1922, the Milk and Dairies Order, 1926 (821), and the Tuberculosis Order, 1925 (681), apply to London. Sect. 20 of the Act of 1915 (t) applies to London, with necessary adaptations, any provisions of the P.H.A., 1875, which are applied by the Act of 1915.

Sect. 207 of the P.H. (London) Act, 1936, corresponds to sect. 58 of the P.H.A. Amendment Act, 1907 (u) (power to require dairymen to furnish lists of sources of supply) with the substitution of "sanitary authority" (i.e. the metropolitan borough council or the City corporation) for "local authority." Where a borough council is in default, sect. 292 of the Act of 1936 will apply. [418]

Sect. 185 of the Act of 1936 gives power to the sanitary authorities (i.e. metropolitan borough councils and the City corporation) to remove from or refuse to enter on the register kept under the Milk and Dairies (Consolidation) Act, 1915, the names of dairymen where the premises are unsuitable for the sale of milk. Appeal to a court of summary jurisdiction is provided.

Sect. 204 of the Act of 1936 prohibits any person who knows himself to be suffering from a dangerous infectious disease from milking any animal. Sect. 206 relates to the inspection of dairies and the prohibition of the supply of milk where the M.O.H. has evidence of disease attributable to or likely to be caused by milk supply.

It is to be noted that, in London, the sanitary authorities and the authorities for the legislation relating to the sale of food and drugs are the City corporation and the metropolitan borough councils.

As to provisions relating to nuisances, see title FACTORIES AND WORKSHOPS. As to provisions relating to food, see title FOOD AND DRUGS. [419]

(s) S. 7; 20 Halsbury's Statutes 422.

(t) 8 Halsbury's Statutes 875.

(u) 18 Halsbury's Statutes 931.

## MILK, CONDENSED OR DRIED

*See* CONDENSED MILK.

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## MILK-BLENDED BUTTER

*See* BUTTER, MARGARINE AND CHEESE.

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## MINE OR MINERAL RAILWAY

*See* DERATING.

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## MINE SHAFTS

*See* QUARRIES AND MINE SHAFTS.

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## MINES AND MINERALS

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See also titles :

DERATING ;  
HIGHWAY NUISANCES ;  
QUARRIES AND MINE SHAFTS ;

RATING OF SPECIAL PROPERTIES ;  
SUBSIDENCE.



## INTRODUCTORY

**Definitions. Mine.**—The definition of "mine" at law may be taken to have been crystallised in *Glasgow Corporation v. Farnie* (a), as primarily expressing an underground excavation for the purpose of getting minerals, although extending also to places where minerals generally obtained from underground workings may be obtained by surface working. [420]

**Minerals.**—Whether an underground working constitutes a mine must therefore depend upon whether it contains or has contained "minerals," and it is accordingly upon the meaning of the word "minerals" that the big legal battles of the nineteenth and the beginning of the twentieth century concerning mines have been fought, with results at times hard to reconcile. Whether a particular substance is a mineral or not must depend on the circumstances of each case—a substance may be a mineral in some places and not in others, and at some periods of time and not at others.

The tests which, from modern decisions (b), would seem to be chiefly applicable are : (a) what was the meaning of the substance in question at the material time, in the mining world, the commercial world, and among landowners ; (b) is the substance exceptional in the district or is it merely a part of the immediate substratum ; (c) was it of known value for commercial purposes at the material date ? [421]

**Ownership of Mines.**—*Prima facie*, the owner in fee of the surface of the land is also the owner of everything beneath it, down to the centre of the earth (c), except gold and silver which belong to the Crown by right of the royal prerogative (d), and petroleum, the property in which was vested in the Crown by the Petroleum (Production) Act, 1934 (e).

Mines under the bed of the sea, adjoining the shore (f), under the foreshore, i.e. between high and low water-marks (g), and under the bed of navigable rivers to the limit of navigability (h), also *prima facie* belong to the Crown as owner of the soil.

In practice, however, it is found that, in many cases, the ownership of the mines and minerals has been dissociated from the ownership of the surface, either by actual reservation of mines and minerals in conveying the surface, or, as for instance, in the case of highways, from the special nature of ownership acquired by the highway authorities in the ground over which the highway runs, or by virtue of certain Acts of Parliament, mainly Inclosure Acts, which, in allowing the disposal of common lands, reserved to the Lord of the Manor the ownership of the Mines and Minerals under the lands inclosed (i).

(a) (1888), 13 App. Cas. 637 ; 34 Digest 604, 12.

(b) *Glasgow Corpn. v. Farnie* (1888), 13 App. Cas. 637 ; 34 Digest 604, 12 ; *North British Rail. Co. v. Budhill Coal and Sandstone Co.*, [1910] A. C. 116 ; 34 Digest 607, 42 ; *Caledonian Rail. Co. v. Glenboig Union Fireclay Co.*, [1911] A. C. 290 ; 34 Digest 606, 36.

(c) Co. Litt. 4a ; *Wilkinson v. Proud* (1848), 11 M. & W. 38 ; 34 Digest 634, 311.

(d) *Case of Mines, R. v. Northumberland (Earl)* (1567), 1 Plowd. 310 ; 34 Digest 618, 116 ; and the Royal Mines Acts, notably 1688 and 1815 ; 3 Halsbury's Statutes 148, 185.

(e) S. 1 ; 27 Halsbury's Statutes 448.

(f) *A.-G. v. Chambers* (1854), 4 De G. M. & G. 206 ; 44 Digest 65, 457.

(g) *Lopez v. Andrew* (1826), 8 Man. & Ry. (K. B.) 329 n. ; 38 Digest 736, 807.

(h) *Lyon v. Fishmongers' Co.* (1876), 1 App. Cas. 662 ; 34 Digest 615, 142.

(i) Cf. e.g. the Inclosure Acts of 1846 and 1851 ; 2 Halsbury's Statutes 448, 588.

The Crown has also, in numerous cases, made grants or given leases of Mines under Crown Lands and under the foreshore and sea-bed.

This fairly general dissociation of the ownership of, or of the right of working, mines, from the ownership, or the right of occupation, of the surface has been mainly responsible for the problems raised in connection with the working of mines and in connection with which so many efforts have been made, both by the courts and by Parliament, to lay down equitable rules for the exercise of mutual rights and the fulfilment of mutual liabilities. [422]

**Acts of Parliament.**—The statutes which deal with mining matters affecting the questions considered under the various headings of this title are mainly the following: Metalliferous Mines Regulation Acts, 1872 and 1875; 12 Halsbury's Statutes 19, 39; Coal Mines Act, 1911; 12 Halsbury's Statutes 82; Mining Industry Acts, 1920 and 1926; 12 Halsbury's Statutes 178, 193; Mines (Working Facilities and Support) Act, 1923; 12 Halsbury's Statutes 181; Coal Mines Acts, 1930, 1931 and 1932; 23, 24 and 25 Halsbury's Statutes 371, 234 and 315; Mines (Working Facilities) Act, 1934; 27 Halsbury's Statutes 442; Mining Industry (Welfare Fund) Act, 1934; 27 Halsbury's Statutes 439; Railways Clauses Consolidation Act, 1845; 14 Halsbury's Statutes 80; Waterworks Clauses Act 1847; 20 Halsbury's Statutes 186; P.H.As., notably: P.H. (Support of Sewers) Act, 1883; 13 Halsbury's Statutes 798; P.H.A., 1936; 29 Halsbury's Statutes 309; Rivers Pollution Prevention Act, 1876; 20 Halsbury's Statutes 316; Highway Act, 1835; 9 Halsbury's Statutes 50; Highway and Locomotives Act, 1878; 9 Halsbury's Statutes 166; Tramways Act, 1870; 20 Halsbury's Statutes 6. [423]

#### RIGHT OF SUPPORT

**Distinction between Common Law Right and Statutory Right.**—The basic principle which lies at the bottom of legislation and decisions regarding right of support is the old principle of the fair use of one's property, embodied in the maxim: *Sic utere tuo ut alienum non laedas*. It is not applicable to mines only or even specially, but in the case of mines its application has, in certain circumstances, been defined by statute and laid down within more or less precise limits with the result that, in considering the position in connection with mines, we have to bear in mind the distinction between those cases in which only the common law right of support is enforceable in accordance with the interpretation given by the courts, and those cases which are governed by special legislation. [424]

**Common Law Right.**—The right of support to land at common law includes both lateral and horizontal support. It is a right which vests in the owner with the land itself and it passes with the land (*k*). But the limits and extent of its application are indefinite and can only be determined in accordance with the facts of each particular case. This, however, must be said, that, in an application to enforce it at the suit of an owner, the courts may consider whether its breach may not be suitably compensated by a money payment, as was done by the House of Lords in *Buccleuch (Duke of) v. Wakefield (l)*. In the particular

(k) *Manchester Corp'n. v. New Moss Colliery*, [1906] 2 Ch. 564 C. A.; 11 Digest 154, 356.

(l) (1870), L. R. 4 H. L. 377; 34 Digest 704, 327.

case of mines, if the strata are in different owners, the upper stratum has a right of support from the lower (*m*), and it is not necessary, whether in the case of support to the surface or to an upper stratum, that the support should be afforded by the minerals themselves, if adequate means are provided otherwise (*n*). [425]

As regards buildings, the position is the same in the case of mines which are not affected by any particular statute as in the case of land similarly situated—the right, in order to be enforceable, must arise from grant or from prescription (*o*) and is not, as in the case of the land itself, incident to the ownership of the land. [426]

**Agreement of Parties.**—The position may be affected, however, by the conditions which the parties agreed when the mines were dissociated from the surface. The grant may have been made with right to let down the surface, in which case, in the absence of other intervening factors, no right to support of the surface may arise against the mines; or the minerals may have been granted with express stipulations to leave certain specified pillars or not to work certain seams in which case the surface owner may only have a remedy if the grantee of the mines disregards the stipulations. [427]

**Statutory Right.**—A statutory right of support has been given in certain cases to owners of the surface and of the buildings or other structures or installations thereon, and in such cases the rights of the parties will be determined in accordance with the relevant statute and not by the application of the common law rules. [428]

**Two Classes of Statutes.**—There are two classes of statutes which affect the right of support in the case of mines, viz: the Mines (Working Facilities and Support) Act, 1923, and amending Acts, which regulate the position as regards mines coming thereunder, and Acts like the P.H.As., the Highway Acts, Railways Acts, Gas, Water and Electricity Acts, which give public authorities, railway companies and public utility undertakings certain specific protection as regards their works and installations, mainly by the incorporation of the Railways Clauses Act or the Waterworks Clauses Act. [429]

**Mines (Working Facilities and Support) Act, 1923, and Amending Acts.**—The Act of 1923, in addition to enabling the Railway and Canal Commission to grant, in cases coming under the Act (as amended by the Mining Industry Act, 1926, and the Mines (Working Facilities) Act, 1934), the right to let down the surface (*p*), as an ancillary right to the working of minerals, also enables the Commission (*q*) to grant support for buildings or works which could not establish such right at common law or obtain it otherwise in view of the conditions under which the underlying mines are worked. In coming to a decision on the subject “the Commission shall have regard to the value of the buildings or works or the cost of repairing damage likely to be caused thereto by subsidence, as compared with the value of the minerals or to the importance in the national interest of the erection or pre-

(*m*) *Butterley Co., Ltd. v. New Hucknall Colliery Co., Ltd.*, [1910] A. C. 381; 34 Digest 708, 940.

(*n*) *Backhouse v. Bonomi* (1861), 9 H. L. Cas. 503, H. L.; 34 Digest 701, 907.

(*o*) *Dalton v. Angus* (1881), 6 App. Cas. 740; 19 Digest 7, 4.

(*p*) Mines (Working Facilities and Support) Act, 1923, s. 3 (2); 12 Halsbury's Statutes 183.

(*q*) *Ibid.*, s. 8.

servation of the buildings or works as compared with the importance in the national interest of the working of the minerals" (r). [430]

**Ancient Monuments.**—In cases affecting the safety of ancient monuments, local authorities are entitled to make application for proper support when such monuments are under their guardianship (s). [431]

**Statutes affecting Public Authorities and Undertakings.**—As the protection given to local authorities and to public utility undertakings under Acts before the Act of 1923 is not quite on the same footing and has not quite the same effect, we shall first consider the position as affecting local authorities as such, and then deal with the position of public utility undertakings. [432]

**Public Authorities.**—In the exercise of their normal functions under the Acts regulating local government, local authorities may be interested in the question of support from mines and minerals in respect of two matters of primary importance, viz: (a) sanitary works, sewerage, drainage, lighting and water supply; and (b) highways.

(a) *Sanitary Works.*—In *Re Dudley Corporation* (i) the court laid down that when a public right is acquired over land, the right of support for the things or structures for which the land was acquired goes with the land; and that, as the P.H.A., 1875, had constituted the local authority to be the sanitary authority for the purpose of sewerage, the statute implied a corresponding obligation upon the owner of mines situated beneath the land acquired for the said purposes so to deal with his minerals as not to take away support from sewers placed on or in the land.

In consequence of this decision, the P.H. (Support of Sewers) Act, 1883, was passed, which declared (u) that a local authority shall not, by reason of anything contained in the Act under which the authority's sanitary work is carried out, be deemed to have acquired or be entitled to right of support for such works from underlying mines, and that a mine owner shall not be subject to any liability to a local authority in respect of damage to sanitary works consequent upon the working of any mines in a reasonable and proper manner. [433]

The Act at the same time provided (a) that sects. 18—27 of the Waterworks Clauses Act, 1847, relating to mines, should be deemed to be incorporated in Acts under the authority of which sanitary work was carried out or maintained, and that local authorities should treat with mine owners and pay compensation for such support as the authorities might require from minerals in respect of sanitary works, and that their requirements might extend in this connection beyond the distance of forty yards provided in the Waterworks Clauses Act—the cost of the acquisition of such support to be part of the cost of the provision or maintenance of the sanitary work.

As the right to support under the Waterworks Clauses Act had been held to apply, in certain cases, only to subjacent and not to lateral

(r) Mines (Working Facilities and Support) Act, 1923, s. 8 (7); 12 Halsbury's Statutes 187.

(s) *Ibid.*, s. 8 (8).

(i) (1881), 8 Q. B. D. 86; 41 Digest 36, 264.

(u) S. 4; 13 Halsbury's Statutes 799.

(a) S. 3; *ibid.*, 798.

support (b) the Act provided that support which could be acquired under it should include vertical and lateral support.

The sanitary works in respect of which the Act of 1883 made those provisions were defined as including "any existing or future building or work constructed by or vested in or under the control of a local authority under the power or for the purpose of (such Act or Order) as relates to the construction or maintenance of any works of sewerage, drainage, sewage disposal, lighting or water supply, and includes any fixtures, pipes, fittings or apparatus connected with any such work and belonging to or used by the local authority" (c).

The effect of the Act of 1883 is to deprive local authorities, in respect of the works mentioned in the Act, of the common law right of support and to substitute exclusively therefor the statutory right resulting from the Waterworks Clauses Act, 1847 (d). [434]

(b) *Highways*.—The ownership of mines under highways remains, like that of the sub-soil, *prima facie* in the owners of the adjoining lands *usque ad medium filum viæ* (e), and the owner of mines, like the owner of the remainder of the sub-soil, is under the obligation not to derogate from his grant, or presumed grant, of the surface for the purposes of a highway by using his sub-soil or his mines so as to render the grant ineffective by letting down the surface or otherwise damaging it to an extent incompatible with its convenient use as a highway (f). [435]

*Existing Roads*.—A local authority, as owner of roads which have existed from time immemorial or of existing roads which have been vested in it as being disturnpiked roads or otherwise by virtue of Highway Acts or Local Government Acts, is under no liability to pay compensation to owners of minerals whose liberty in getting them is fettered by liability to give adequate support to the surface; but, on the other hand, in the words of sect. 27 of the Highways and Locomotives Act, 1878 (g), "the person entitled to such mines or minerals shall have the same power of working and getting the same or other minerals as if the road or highway had not become vested in the urban sanitary authority; but so nevertheless that in such working and getting no damage shall be done to the road or highway." [436]

*New Roads*.—As regards new roads, however, the obligations and rights of the local authority respecting conditions of support from mines or minerals would be regulated by the Act or Order authorising the building of such roads and by the terms under which the land has been acquired, compulsorily or otherwise (h), and it might very well happen that, in certain specified cases, the mine-owner would be obliged not to work certain seams or would have to leave in certain pillars. [437]

*What Amounts to Damage*.—The position as to what would be held to constitute damage to the roadway of such a nature as to make the mine-owner liable for repair has been much discussed, but may pro-

(b) *Metropolitan Board of Works v. Metropolitan Rail. Co.* (1869), L. R. 4 C. P. 192; 41 Digest 263.

(c) P.H.A., 1875 (Support of Sewers) Amendment Act, 1883, s. 2; 13 Halsbury's Statutes 798.

(d) *Jary v. Barnsley Corpn.*, [1907] 2 Ch. 600; 41 Digest 265.

(e) *Goodtitle d. Chester v. Alker and Elwes* (1757), 1 Burr. 133; 26 Digest 325, 536.

(f) *Benfieldside Local Board v. Consett Iron Co.* (1877), 3 Ex. D. 54; 26 Digest 455, 1715.

(g) 9 Halsbury's Statutes 182.

(h) See *post*, p. 217.

bably, for most practical purposes, be considered governed by the decisions in *A.-G. v. Conduil Colliery Co. (i)* and in *Lodge Holes Colliery Co. v. Wednesbury Corporation (k)*.

In the *Conduil Colliery Co. Case*, the defendant, in working his mine in the proper and usual manner, had brought about a sinkage of the roadway, which, however, did not actually damage the roadway itself or impede traffic, but a railway company, which had a level crossing over the highway, had to put up, in order to maintain the level, an embankment which prevented the use of the road. The local authority, through the Attorney-General, took action against the mine owner. The court held that he was not liable. This seems to indicate that if sinkage of the surface by mining operations does not damage the roadway for its purposes as a roadway and does not impede traffic, the local authority may have no remedy against the mine owner, and that, by logical deduction, the mine owner can only be made liable for such results of the sinkage as are in excess of those in respect of which he has no liability and not for full restoration of the roadway, which deduction was drawn in the *Lodge Holes Colliery Case, supra*. The local authority raised to its former level a highway let down and damaged by mining operations and sought to recover the cost from the mine owners. The House of Lords held that the mine owners were only responsible for so much of the cost as would restore the road to a level equally commodious.

Attention should, however, be called to statements, notably in *New Sharlston Collieries v. Westmorland (Earl)*, 1900 (l), and in *Trinidad Asphalt Co. v. Ambard (m)*, tending to establish that an action could be maintained by a local authority against a mine owner if subsidence is substantial, although the damage to the road as such may be infinitesimal. The remarks of COLLINS, J., in the *Conduil Colliery Co. Case*, to the same effect should also be referred to. [488]

*Stopping or Diverting Damaged Road.*—When, however, mining operations have damaged or destroyed a roadway, and the mine owner is desirous, in the interest of the mine, that the roadway should be stopped up or diverted, he cannot avail himself for the purpose of sect. 8 of the Mines (Working Facilities and Support) Act, 1923 (n), and cannot apply to the Railway and Canal Commission for the grant, as an ancillary right necessary to the working of the mine, of a right to let down the surface of the road. The road can only be stopped up or diverted on the order of justices made on the application of the road authorities under sects. 84, 85 of the Highway Act, 1835 (o), and if the road authority refuse to make such application, the mine owner has apparently no remedy. [489]

*Liability of Adjoining Owners.*—As against an adjoining owner, as distinct from a mine owner under liability in respect of road surface, a local authority may, it seems, be entitled to raise to its original level a road lowered by subsidence (q).

(i) [1895] 1 Q. B. 301; 26 Digest 421, 1406.

(j) [1908] A. C. 323; 26 Digest 331, 630.

(k) [1904] 2 Ch. 443, n.; 34 Digest 705, 933.

(l) [1899] A. C. 594, at 600; 34 Digest 651, 431.

(m) 12 Halsbury's Statutes 183.

(n) 9 Halsbury's Statutes 97—99; *Hoddesden U.D.C. v. Broxbourne Sand Pits*, [1936] 2 K. B. 19; [1936] 1 All E. R. 798; Digest Supp.

(o) *Burgess v. Northwich Local Board* (1880), 6 Q. B. D. 264; 26 Digest 335, 661; *Atherton v. Cheshire County Council* (1895), 60 J. P. 6, C. A.; 26 Digest 334, 655.

*Damage by Mine not Matter for Prosecution.*—A mine owner who, in the course of his operations underneath the surface, causes injury to the surface of the highway cannot be prosecuted under sect. 72 of the Highway Act, 1835, for wilfully damaging the highway (r).

*No Liability as Regards Tramways.*—The Tramways Act, 1870 (s), provides that "nothing in this Act shall limit or interfere with the rights of any owner, lessee or occupier of any mines or minerals lying under or adjacent to any road along or across which any tramways shall be laid to work such mines and minerals; nor shall any such owner, lessee or occupier be liable to make good or pay compensation for any damage which may be occasioned to such tramway by the working in the usual and ordinary course of their mines or minerals."

*No Liability as Regards Wires, Posts, etc.*—Similarly, with reference to damage by mining operations to posts, wires, tubes and other apparatus which have been stretched or placed above, over, along or across any street, and in regard to which powers are given to local authorities by the P.H.A. Amendment Act, 1890, which enacts that "nothing in this part of this Act shall limit or interfere with the working of any mines or minerals lying under or adjacent to any street along or across which such posts," etc., shall be placed, provided the mines or minerals are worked in the ordinary course (t). [440]

**Public Utility Undertakings. Railways.**—The statutory incorporation of the mines sections of the Railway Clauses Act, 1847, in connection with works and powers of local authorities under a number of Acts of Parliament (as to which see "Acquisition of Land," *post*, pp. 217—221), renders it necessary to examine in some detail the provisions of the Act, as now amended by Part II. of the Mines (Working Facilities and Support) Act, 1923 (u).

The Act of 1923 (a) provides that nothing therein should affect any existing rights of local authorities, railway companies and other statutory bodies to acquire minerals, or in minerals already acquired, or in respect of existing rights of support or powers to acquire such rights, or should confer upon such bodies any right to prohibit or restrict the working of minerals.

Sect. 15 (b) substitutes a new set of sections for sects. 78—85 of the Railway Clauses Consolidation Act, 1845, as regards the conditions under which the owner of minerals lying under an area of protection may work them, the compensation payable by the company for leaving minerals unworked, the liability of the mine owner for damage resulting from authorised working, the conditions under which the mine owner may obtain access through minerals which he cannot work to minerals which he can work, the rights of the company as regards inspection of workings and to obtain protection against improper working. The area of protection under which a mine owner cannot work his minerals without notice to the company is now delimited as follows: "The area comprising any railway or works of the company and such a lateral distance therefrom, on all or both sides thereof, as is equal at each point along the railway to one-half of the depth of the seam at

(r) *Pease v. Paver* (1875), 30 J. P. Jo. 407; 26 Digest 430, 1564.

(s) S. 59; 20 Halsbury's Statutes 29.

(t) S. 15 (2); 13 Halsbury's Statutes 820.

(u) 14 Halsbury's Statutes 889.

(a) S. 13; 12 Halsbury's Statutes 190.

(b) 14 Halsbury's Statutes 889.

that point, or forty yards, whichever be the greater; and when the said lateral distance exceeds forty yards, the area of protection shall be divided into two areas:

- (a) an inner area of protection consisting of the area comprising the railway or works and a distance of forty yards therefrom on all or both sides thereof; and
- (b) an outer area of protection consisting of so much of the area of protection as is not included in the inner area of protection" (c).

The company and a mine owner can, as between them, vary their respective rights under the Act with regard to any of the minerals to which the Act applies, but not so as to prejudice the rights of any mine owner, royalty owner or company not a party to the agreement, without his or their consent (*ibid.*, sect. 85 A.).

Mine owners are specifically relieved from liability to leave support otherwise than required by the Act or by agreement between the parties (*ibid.*, sect. 85 E.).

The Act further provides that the new sections shall apply in the case of any Act or order obtained by the Railway Company before 1928 which does not prescribe any distance in lieu of the forty yards mentioned in the Act of 1845 (d), or which, without incorporating the Act of 1845, prescribes a distance of forty yards. [441]

*Public Utility Undertakings of Local Authorities.*—Public utility undertakings in which local authorities are mainly interested are those regulated by the Waterworks Clauses Act, 1847; 20 Halsbury's Statutes 186; Gasworks Clauses Act, 1847; 8 Halsbury's Statutes 1215; Electric Lighting (Clauses) Act, 1899; 7 Halsbury's Statutes 705; and their position as regards mines depends mainly upon the powers of the private Act and the extent to which the Railway or the Waterworks Clauses Acts are incorporated therein.

*Waterworks.*—As in the case of Railways, purchase of land under the Waterworks Clauses Act (e), does not entitle the undertaker to the mines and minerals underneath the surface (unless specially purchased) except such as may be necessary to be dug or carried away or used in the construction of the works, and the undertaker is not entitled to support from the mines or minerals except such as he may be willing to treat and pay for. If the mine owner is desirous of working minerals underlying any reservoir, building, pipes or other works of the undertakers within the distance prescribed on the deposited plans, he must give notice to the undertaker who shall inspect the mine to ascertain whether the proposed workings are likely to affect his works, and if so, offer to treat for compensation—the amount of which may be settled by arbitration if no agreement is arrived at (*ibid.*, sect. 22). If, at the expiration of thirty days from the notice, the undertaker does not offer to treat for compensation, the owner shall be at liberty to work and drain his mine as if the Act had not been passed, provided he does so in the usual manner, and without causing wilful damage (*ibid.*, sect. 28).

The mine owner may make communications, through minerals which he is prevented from working, for airways, water levels, or

(c) S. 78 (5); 14 Halsbury's Statutes 390.

(d) See under the heading "Acquisition of Land," *post*, p. 217

(e) S. 18; 20 Halsbury's Statutes 192.



access to minerals on either side (*ibid.*, sect. 24). The undertaker shall also pay the mine owner from time to time all such additional expenses and losses as the mine owner shall have incurred by severance of mines or by interruption of or restrictions on works and for minerals not obtained (*f*). [442]

*Gasworks.*—The Gasworks Clauses Act contains no provision regarding mines and in the absence of special provisions in the private Act or Order or in any agreement under which the land is occupied or used, the rights and duties of mine owners in the matter of support for gas installations would seem to be the same as those of any owner of the subsoil. As regards land acquired for the purpose of gasworks, the purchaser would seem to be entitled, as having "an interest in land" to apply to the Railway and Canal Commission for an ancillary grant of right of support. As regards gas pipes laid under a highway by statutory authority, dedication or presumed dedication of the surface for highway purposes implies dedication of so much of the subsoil as will enable the statutory undertakers to maintain their installation (*g*). They are entitled to support from the subsoil, but if the supplying of that support entails upon the owner of the subsoil limitations as regards his user thereof or interferes with his power of getting underlying minerals, he is entitled to compensation (*h*). It should be noted that although the right of gasworks undertakers to lay pipes in highways is primarily a right given in the highway as such and which apparently lasts only so long as the highway continues to exist (*i*), their right to support seems to be independent of the right of support vested in the highway, and a mine owner who has caused a subsidence which injured the gas installation without, however, causing such injury to the roadway as would make him liable within the principle in *A.-G. v. Conduit Colliery Co.* (*k*) would seem, within the principles of the cases previously referred to, to be independently responsible to the Gasworks owners. [443]

*Electricity.*—As regards electricity supply installations under highways, the position and rights would be very much the same as in the case of gas installations, the Electric Lighting Clauses Act, 1890, embodying the relative clauses of the Gasworks Clauses Act. As regards lands bought for the purpose of electricity works, the rights and conditions of support from underlying mines or minerals would be such as is provided for in the purchase agreement, or failing any provision, such as would result from common law or as might be granted by the Railway and Canal Commission to the purchasers as having an "interest in land" within the meaning of sect. 8 of the Mines (Working Facilities and Support) Act, 1923 (*l*).

But the Electricity (Supply) Act, 1919, sect. 22 (1), in empowering

(*f*) Waterworks Clauses Act, 1847, s. 25; 20 Halsbury's Statutes 105. In connection with the respective rights and liabilities of waterworks undertakers and mine owners, reference should be made to *New Moss Colliery, Ltd. v. Manchester Corp.*, [1908] A. C. 117; 11 Digest 154, 356, and also to the reports of the case in the courts below, *sub nom. Manchester Corp. v. New Moss Colliery, Ltd.*, [1906] 2 Ch. 504, A. C.

(*g*) *Schneider v. Worthing Gas Light and Coke Co.* (No. 2), [1913] 1 Ch. 118; 25 Digest 472, 16; *Porter v. Ipswich Corp.*, [1922] 2 K. B. 145; 20 Digest 202, 20.

(*h*) *Normanton Gas Co. v. Pope and Pearson, Ltd.* (1883), 52 L. J. Q. B. 629; 25 Digest 474, 27.

(*i*) *Rolls v. St. George's, Southwark* (1880), 14 Ch. D. 785; 26 Digest 380, 627.

(*k*) [1895] 1 Q. B. 301, *ante*, p. 207.

(*l*) 12 Halsbury's Statutes 187.

authorised undertakers under the Act to place electric lines above or below ground in *any land* other than that covered by buildings or pleasure grounds and gardens, and in giving the undertakers right of entry to the land for repairing or altering their lines, has extended the problem of support, in so far as electric works on, in or over such lands are concerned, in a way which was not contemplated under the Gasworks Clauses Act, under which undertakers were prohibited from placing pipes or other works or apparatus in land not dedicated to public use without the consent of the owners or occupiers (*m*).

Does the general power of entry and use of any land for laying or otherwise installing electric lines, given by the Electricity (Supply) Act, 1919, create an "interest in land" within the meaning of the Mines (Working Facilities and Support) Act of 1923, which would vest in the undertakers in respect of the specific lands in connection with which the general power may be used, so as to enable an electricity undertaker to take advantage of sect. 8 of the Act of 1923? Under the Gasworks Clauses Act, the extent of the right of the gas undertaker *in alieno solo*—the actual soil in which the pipes are laid forming part of that section of the sub-soil dedicated to the public with the road surface (*ante*, p. 210)—is merely a right of support, and *Badham v. Marris* and *Swainston v. Finn* (*n*) seem to establish that a mere right of support or a right of light do not amount to an interest in land. The right given by the Electricity Supply Act is, however, more extensive than the rights conferred by the Gasworks Clauses Act and of a different nature.

If the electricity installation can be described as "works of lighting" so as to bring it within the definition of "sanitary work" under the P.H. (Support of Sewers) Act, 1883, a local authority owning such installation in the capacity of "authorised undertakers" under the Act of 1919, would seem to be protected by the last para. of sect. 8 of the Act of 1883 (as to which see *post*, pp. 214–216). [444]

#### SAFETY PROVISIONS OF ABANDONED MINES

**Abandonment of Mines.**—A mine may become abandoned as follows:

- (a) Under the Limitation Acts, if it is shown not to have been worked for a continuous period of six years or longer (*o*);
- (b) In the case of a coal mine, under the Act of 1911 (*p*), if it has not been worked for a period of twelve months, unless the roadways and workings have been maintained in an accessible condition;
- (c) By notice of abandonment or of discontinuance of working under the Metalliferous Mines Act, 1872 (*q*), or the Coal Mines Act, 1911 (*r*);
- (d) In the case of a coal mine, by being closed down by virtue of a scheme under sect. 1 of the Coal Mines Act, 1930 (*s*).

[445]

(*m*) S. 7; 8 Halsbury's Statutes 1218.

(*n*) (1881), 45 L. T. 579; (1883), 52 L. J. (Ch.) 235.

(*o*) *Itule v. Jewell* (1881), 18 Ch. D. 660; 32 Digest 513, 1722.

(*p*) Coal Mines Act, 1911, s. 21 (5); 12 Halsbury's Statutes 94.

(*q*) S. 12; 12 Halsbury's Statutes 23.

(*r*) S. 21; *ibid.*, 92.

(*s*) 23 Halsbury's Statutes 371.

**Precautions Necessary.**—The abandonment of a mine casts upon the owner, both at common law and by statute, the liability to take adequate precautions to make the premises safe and prevent accidents. [446]

**Requirements of Metalliferous Mines Act.**—In the case of mines coming under the Metalliferous Mines Regulation Act, 1872, sect. 13 (*t*) of the Act enacts that whenever a mine is abandoned or its working discontinued "at whatever time such abandonment or discontinuance occurred, the owner thereof and every other person interested in the minerals of the mine shall cause the top of the shaft and any side entrance from the surface to be and to be kept *securely fenced* for the prevention of accidents." This applies to all mines abandoned or discontinued since the passing of the Act. As regards mines abandoned or discontinued prior to that date, the requirement applies only to such shafts or entrances as are situate "within fifty yards of any highway, road, footpath or place of public resort, or in open or unenclosed land, or not being situate as aforesaid, is required by an inspector in writing to be fenced on the ground that it is specially dangerous." [447]

**Requirements of Coal Mines Act.**—In the case of coal mines, the situation is regulated by sect. 26 of the Coal Mines Act, 1911 (*u*), which provides that "when any mine is abandoned or the working thereof discontinued, at whatever time the abandonment or discontinuance occurred, it shall be the duty of the owner and of every other person interested in the minerals of the mine to cause the top or entrance of every shaft and outlet to be kept surrounded by a *structure of a permanent character* sufficient to prevent accidents." In the case of coal mines, the Act provides no such relaxation as is provided by the Metalliferous Mines Act in the case of mines abandoned before the passing of the Act. Moreover, the requirement is not merely to fence the top of the shaft and of side entrances and keep it securely fenced to prevent accidents, but to surround the entrances and outlets by a structure of a permanent character sufficient to prevent accidents.

Fencing to comply with the Metalliferous Mines Act must be immediately adjacent to the entrances (*a*) and the same requirement would no doubt be enforced under the Coal Mines Act. [448]

**Position of Local Authorities in Case of Non-fencing.**—The non-fencing of abandoned or discontinued mines constitutes a nuisance under the P.H.A. (*b*), and the local authority has in respect thereof the powers and duties of the P.H.A., 1875 (now embodied in Part III. of the P.H.A., 1936). If an abandoned mine shaft or entrance is not fenced as required by the Act applying thereto and the owner or other parties responsible is or are unknown or cannot be found, the local authority *ought* to fence (*c*). But the mere fact that a public well, formed in an abandoned mine shaft, vests in the local authority under the P.H.A. does not make the authority a "person interested in the minerals of the mine" so as to make it liable to fence (*d*). The interest

(*t*) 12 Halsbury's Statutes 23.

(*u*) *Ibid.*, 96.

(*c*) *Foster v. Owen* (1892), 62 L. J. M. C. 7; 34 Digest 748, 1220.

(*b*) Metalliferous Mines Regulation Act, 1872, s. 12; 12 Halsbury's Statutes 23; Coal Mines Act, 1911, s. 26 (3); 12 Halsbury's Statutes 96.

(*c*) *Foster v. Neeshaven Harbour Trustees* (1897), 61 J. P. 629; 34 Digest 750, 1233.

(*d*) *Knuckey v. Redruth R.D.C.*, [1904] 1 K. B. 382; 34 Digest 748, 1219.

necessary to entail liability under the Act would have to be a pecuniary interest (e), and the fact that the residents in the neighbourhood of an abandoned mine or quarry are obtaining from it such minerals or stone as they require does not amount to such an interest in the minerals or stone as to make any individual resident who so obtains minerals or stone responsible for fencing (f).

The position of local authorities, as regards liability to fence abandoned mines whose owners cannot be traced, would seem to be determined by the principles governing the application of the provisions of the P.H.As. in the matter of abatement of nuisances. The Metalliferous Mines Regulation Act, 1872, and the Coal Mines Act, 1911, whilst making the non-fencing of abandoned mines a statutory nuisance, have done nothing more than to apply to this nuisance the provisions of the P.H.As. without in any way altering those provisions. It would seem to result from this that there is no direct duty upon a local authority to fence an abandoned mine whose owner cannot be traced, such as the direct duty cast by the Acts upon an owner to fence his abandoned mine, and that they may adopt towards the abatement of such a nuisance the attitude which they would adopt towards any other nuisance under the P.H.As. comparable with it from the point of view of public danger. [449]

**Notice of Abandonment.**—Under the Metalliferous Mines Regulation Act, 1872 (g), which applies only to mines or workings in which more than twelve persons are ordinarily employed below ground, when the working of any shaft is abandoned or the working thereof is discontinued, the owner or agent of the mine must give notice thereof to the inspector of the district within two months of such abandonment or suspension. Failure to give such notice is an offence under the Act. Similar notice must be given in case the working of a shaft is recommenced after any abandonment or discontinuance exceeding two months.

Under the Coal Mines Act, 1911 (h), similar notice is required to be given "where a shaft, outlet or seam of any mine is abandoned or the working thereof discontinued." In the case of coal mines, the "owner, agent or manager of the mine" is responsible for giving the notice. Similar notice must be given if the working of a shaft, outlet or seam is recommenced after any abandonment or discontinuance for a period exceeding two months. [450]

**Deposit of Plans.**—Under the Metalliferous Mines Regulation Act, 1872 (i), the owner of an abandoned mine must lodge with the Secretary of State (now the Mines Department of the Board of Trade) (k) within three months of the time of abandonment, an accurate plan showing the boundaries of the working up to the time of abandonment. No person except an inspector can be at liberty to inspect or copy this plan within ten years of its deposit, except by licence of the Secretary of State (now Mines Dept.).

Under the Coal Mines Act, 1911 (l), where a mine or seam is

(e) *Arkwright v. Evans* (1880), 40 L. J. M. C. 82, D. C.; 34 Digest 747, 1218.

(f) *Poster v. Newhaven Harbour Trustees* (1897), *supra*.

(g) S. 12; 12 Halsbury's Statutes 23.

(h) S. 10; *ibid.*, 91.

(i) S. 14; *ibid.*, 24.

(k) Mining Industry Act, 1920, s. 25; *ibid.*, 178.

(l) S. 21; *ibid.*, 99.

abandoned, the owner at the time of abandonment must similarly deposit plans showing as at the date of abandonment :

- (a) the boundaries of the workings ;
- (b) the pillars of coal or other mineral remaining unworked ;
- (c) the position, direction and extent of every known fault of every seam in the mine or seam, and every known washout and intrusive dyke ;
- (d) the position of the workings with regard to the surface ;
- (e) the general direction and rate of dip of the strata ;
- (f) the depth of every shaft.

The owner must also deposit a section of the strata sunk through, or, if not practicable, a section of every seam in the mine, or of the seam, as the case may be.

As in the case of metalliferous mines, the plans shall not be seen except by an inspector until the expiration of ten years from the time of abandonment, unless by licence of the Secretary of State (now Mines Dept.), but in the case of mines under the Coal Mines Act, 1911, no such licence shall be granted unless the Secretary of State (now Mines Dept.) is satisfied that the inspection of such plans is necessary in the interests of safety. The owner, however, may give consent to the examination of the plans or of the sections.

The Petroleum (Production) Act, 1934, s. 7, has extended the right to inspect plans of abandoned mines to any officer appointed by the Board of Trade to ascertain the position of workings through or near which it is proposed to bore for petroleum.

If the Secretary of State (Mines Dept.) considers the plans or sections deposited inaccurate he may have new plans or sections prepared by a surveyor appointed for the purpose and charge the cost, or such part of the cost as he thinks fit, to the person who was owner of the mine at the time of abandonment, from whom such cost shall be recoverable as a debt due to the Crown. [451]

#### MINE SHAFTS

**Provisions as to Shafts.**—Apart from the provisions relating to shafts in abandoned mines or to abandoned shafts, dealt with in the preceding chapter, there are also a number of requirements concerning the sinking, maintenance and protection of shafts in connection with working mines. [452]

**Near Highways.**—The most important requirements from the point of view of local authorities are probably those under the Highway Act, 1835 (*m*), which enacts "it shall not be lawful for any person to sink any pit or shaft . . . within the distance of twenty-five yards . . . from any part of any carriageway or cartway, unless such pit or shaft . . . shall be within some house or other building or behind some wall or fence sufficient to conceal or screen the same from the said carriageway or cartway, so that the same may not be dangerous to passengers, horses or cattle." It is a good answer to proceedings under the section that the fence was sufficient for the purposes indicated, although it may not have been of sufficient strength to stand the shock, for instance, of a cartload of stone (*n*). [453]

(*m*) S. 70 ; 9 Halsbury's Statutes 85.

(*n*) *Blakeley v. Baker* (1878), 39 L. T. 359 ; 7 Digest 205, 208

## DRAINAGE AS IT AFFECTS LOCAL AUTHORITIES

**Regulation of Drainage.**—The drainage of mines may be regulated mainly in any of the following ways :

- (a) as a matter of private arrangement or of custom, or by the exercise of prescriptive rights ;
- (b) in accordance with local Acts of Parliament or Orders of local application ;
- (c) by virtue of a scheme made by the Board of Trade (Mines Dept.) under the powers of sect. 18 of the Mining Industry Act, 1920 (o) ;
- (d) in accordance with ancillary rights granted by the Railway and Canal Commission (p).

There is nothing to prevent the owner of a mine from allowing it to become flooded provided that in doing so he does not interfere with neighbouring mines or with the surface (accidental flooding as a result of usual working is not under consideration), and it has even been held that in the absence of a covenant to drain, a lessee is not bound to drain the mine (q). [454]

**How Local Authorities are affected.**—The drainage of mines seems to affect local authorities chiefly as regards disposal of the effluent ; in connection with their powers and duties under the P.H.As. ; and under the Land Drainage Act, 1930, where they are the drainage authority under the latter Act. [455]

**Interference with Sewerage.**—As regards any interference with the local authority's own system of sewerage resulting from drainage of mines, the authority's rights and powers under the P.H. (Support of Sewers) Act, 1883 (r), would be in accordance with the provisions of the Waterworks Clauses Act, 1847 (s). The authority would have to pay compensation for any right of support required, if its requirements as regards the drainage of a mine were such as to interfere with the mine or obstruct its efficient working. If, after notice of intention to work the mines, the authority does not state its willingness to treat, it shall be lawful for the mine owner, lessee or occupier "to work the said mines *and to drain the same*, by means of engines or otherwise as if this Act and the special Act had not been passed, so that no wilful damage be done to the said works and so that the mines be not worked in an unusual manner." [456]

**Under the P.H.As.**—The P.H.A., 1936, re-enacts (t) with some additions the provisions of sect. 334 of the P.H.A., 1875 (u), for the protection of mines, the owners of which might otherwise be liable to prosecution at the hands of local authorities on the ground of nuisance caused by drainage or disposal of effluents. "Nothing in this part of this Act shall be construed as extending to a mine of any description so as to interfere with or obstruct the efficient working of the mine or as extending to the smelting of ores and minerals, etc."

(o) 12 Halsbury's Statutes 175.

(p) Under the Mines (Working Facilities and Support) Act, 1923 ; *ibid.*, 181.

(q) *Payne v. Hooper Colliery Co.* (1887), 3 T. L. R. 359.

(r) S. 3 ; 13 Halsbury's Statutes 708.

(s) See *ante*, "Support," pp. 203-210.

(t) S. 109 ; 20 Halsbury's Statutes 406.

(u) 13 Halsbury's Statutes 762.

It was held in *A.-G. v. Logan* (a) that the provision to the same effect in the Act of 1875 did not relieve mine owners from liability for causing a public nuisance, and did not prevent local authorities from taking in such a case proceedings for abatement, any more than it relieved mine owners from their common law liability to persons whose property was affected by the nuisance.

If, however, the nuisance merely arose from interference with support of drainage or water system and the authority had not treated for compensation for support, it would seem that it could only recover if it could show that the damage was wilful or had been caused by the working of the mine in an unusual manner.

Nothing in the Act affects the right of drainage acquired by any person, by prescription or otherwise, before the commencement of the Act (b). [457]

**Position under Land Drainage Act.**—Under the Land Drainage Act, 1930 (c), county councils and county borough councils have, in certain cases, the powers of catchment boards and of drainage boards, so that if, in arrangements for the drainage of mines, any obstruction has to be erected interfering with the flow of any watercourse, the leave of the council has to be obtained in accordance with the requirements of sect. 44, and if any installation existing before the passing of the Act has to be removed for the purposes of the Act, the local authority shall have power to order such removal subject to making full compensation. If, however, the flow of watercourses under the control of the council is impeded by subsidence of the surface due to mining operations, the *surface owner* shall be under no liability to put the watercourse on his land in proper order (d). [458]

**Railway and Canal Commission may Grant Drainage Rights.**—It was not until the passing of the Mines (Working Facilities and Support) Act, 1923, that steps were taken to create what may be called a general authority empowered to deal with questions of mine drainage in cases where it is not reasonably practicable to obtain drainage rights by private arrangement. The Railway and Canal Commission are empowered (e) to grant a right to dispose of water or other liquid matter obtained not only from mines but also from any by-product works.

Power is also given to grant a right to obtain a supply of water or other substances in connection with the working of minerals (f). [459]

**Local Authorities and Application for Drainage Rights.**—Provision is made in sect. 5 for consultation of local authorities before a grant is made which might affect them. [459A]

#### POLLUTION OF RIVERS BY MINES

**Pollution from Mine Drainage.**—The law relating to the pollution of rivers and natural streams by drainage or refuse from mines is

(a) [1891] 2 Q. B. 100 ; 36 Digest 182, 263.

(b) P.H.A., 1875, s. 339 ; 18 Halsbury's Statutes 703.

(c) S. 50 ; 23 Halsbury's Statutes 565.

(d) S. 35 (1), (6) ; *ibid.*, 554, 556.

(e) Mines (Working Facilities and Support) Act, 1923, s. 3 (e) ; 12 Halsbury's Statutes 183.

(f) *Ibid.*, s. 3 (d).

regulated by Part III. of the Rivers Pollution Prevention Act, 1876 (g), sect. 5 of which enacts as follows :

"Every person who causes to fall or flow or knowingly permits to fall or flow or to be carried into any stream any solid matter from any mine in such quantities as to prejudicially interfere with its due flow, or any poisonous, noxious or polluting solid or liquid matter proceeding from any mine, other than water in the same condition as that in which it has been drained or raised from such mine, shall be deemed to have committed an offence against this Act, unless in the case of poisonous, noxious or polluting matter he shows to the satisfaction of the Court having cognisance of the case that he is using the best practicable and available means to render harmless the poisonous, noxious or polluting matter so falling or flowing or carried into the stream." [460]

**Responsibility Apart from Offence.**—It does not follow, however, that, because no offence is committed under the Act, the mine owner may not be responsible to persons who are prejudicially affected by his drainage, especially if they can show actual loss, or to local authorities under the P.H.A. or under local Acts. In *Carlyon v. Lovering* (h), for instance, the mine owner only escaped liability because he showed continued drainage of the matters complained of into the stream over a period exceeding forty years and pleaded the immemorial custom of the Cornwall tin bounders to drain in the manner to which objection was taken in the case.

Nowadays, however, there seems to be little reason why mine owners, who have to arrange for disposal of drainage from their mines, should run unnecessary risks of infringing the Rivers Pollution Prevention Act or of laying themselves open to proceedings on the part of individuals or of local authorities, for, as pointed out above, p. 216, the Mines (Working Facilities and Support) Act, 1923 (i), enables the Railway and Canal Commission to grant ancillary rights as respects drainage.

The Act of 1876 was supplemented by the Rivers Pollution Prevention Act, 1893, which, however, only refers to the liability of sanitary authorities in respect of sewage matter carried into a stream after passing through a channel vested in the authority. [461]

**Application of the Act to Tidal Waters.**—By the Salmon and Fresh-water Fisheries Act, 1923, sect. 55 (k), the provisions of the Rivers Pollution Prevention Acts were made to apply "to the sea to such an extent and to tidal waters to such a point" as may be found necessary "for the purpose of the protection of fisheries." [462]

#### ACQUISITION OF LAND INCLUDING MINES AND MINERALS

**General Rule.**—Generally, a purchase of land carries with it everything (except gold and silver mines and petroleum, see *ante*, p. 202) on, over or under; it *usque ad coelum et ad inferos* (l), but local authorities acquiring land which covers mines and minerals, for any of the pur-

(g) 20 Halsbury's Statutes 317.

(h) (1857), 1 H. & N. 784; 34 Digest 751, 1245.

(i) S. 3 (c); 12 Halsbury's Statutes 183. As pointed out under heading "Drainage as it affects Local Authorities," *ante*, p. 214.

(k) 8 Halsbury's Statutes 812.

(l) Co. Litt. 4a.



poses for which they are empowered to acquire land, by agreement or compulsorily, do so on the conditions and within the restrictions imposed by the various Acts by virtue of which they are proceeding. [463]

**The Clauses Acts.**—These Acts are: The Lands Clauses Consolidation Act, 1845, and the amending Acts of 1860, 1869, 1883 and 1895, together with the Acquisition of Land (Assessment of Compensation) Act, 1919; 2 Halsbury's Statutes 1118—1176; The Railways Clauses Consolidation Act, 1845; 14 Halsbury's Statutes 30 (as amended by the Mines (Working Facilities and Support) Act, 1923, sect. 15; 14 Halsbury's Statutes 389); The Waterworks Clauses Act, 1847; 20 Halsbury's Statutes 186.

The Railways and the Waterworks Clauses Acts both incorporate the provisions and restrictions of the Lands Clauses Acts with regard to the acquisition of land, but contain in addition special clauses applicable to Mines and Minerals (sects. 77—85 in the Railways Act and sects. 18—27 in the Waterworks Act). [464]

**Exclusion of Mines and Minerals.**—The effect of the Railways and the Waterworks Clauses Acts is to exclude, from a transfer of land thereunder, all mines and minerals (except such parts thereof as shall be necessary to be dug or carried away or used in the construction of the work) unless such mines and minerals are specially named therein and conveyed thereby (*m*). This provision does not limit or affect the right or power of a body purchasing under the Acts to purchase the land with the mines and minerals thereunder or such parts thereof as it may require, even compulsorily (*n*). It merely enacts that no mines and minerals except as stated shall be deemed to be included in a conveyance of land under the Acts unless specified therein and conveyed thereby. [465]

**Purchase under Lands Clauses Acts Exclusively.**—The Lands Clauses Acts contain no such provision and it would seem to result from this that a purchaser outside these restrictive Acts, proceeding exclusively under the Lands Clauses Acts, could acquire the mines and minerals by mere purchase of the "land" as would happen in a private sale of land, if the land and minerals had not been severed. [466]

**The Clauses Acts as Statutory Basis of Support.**—One of the effects of the incorporation of the Railways and the Waterworks Clauses Acts is to place the right of support of undertakers or local authorities working thereunder upon a statutory basis and to do away, in such circumstances, with the common law right. "The decisions . . . have settled beyond further controversy that in cases where the undertaker purchases from an owner who is entitled to land and the minerals under it, the undertaker who does not expressly purchase the minerals gets no common law right to support for his land from the minerals or from the adjacent land or the minerals under it within forty yards of the land purchased and is relegated solely to such rights

(*m*) Railway Clauses Consolidation Act, 1845, s. 77; 14 Halsbury's Statutes 61; Waterworks Clauses Act, 1847, s. 18; 20 Halsbury's Statutes 192.

(*n*) *Errington v. Metropolitan District Rail. Co.* (1882), 10 Ch. D. 559; 34 Digest 605, 25; *Re Gerard (Lord) and L.N.W. Rail. Co.*, [1895] 1 Q. B. 459; 84 Digest 715, 295.

and privileges with regard to subjacent minerals and adjacent land and minerals as are conferred on him by the code " (o). [467]

**Power to Purchase Minerals.**—Local authorities and bodies purchasing under the powers of the Acts are not only entitled to purchase the minerals when the land and minerals are in the same owner but also when they have been severed, for otherwise the construction of the authorised work might be impossible (p). It is not necessary that the purchase of land and minerals should take place at the same time. Purchase of the surface does not avoid the powers of compulsory acquisition by a purchaser under the Acts and he may purchase mines compulsorily as a separate tenement at any time within the period of his powers of purchase (*id. ibid.*). There is, of course, nothing to prevent purchase by agreement at a later date (q).

The power of purchasers of the surface under the Acts to prevent the working of mines or the getting of minerals on terms of compensation to the owner is an additional and independent power which does not restrict their power of purchase.

The principles which govern the application of the right of purchase of mines or minerals may therefore be summarised as follows :

- (a) that the mines or minerals lie within the limits fixed for the expropriation of the surface land covering them ;
- (b) that the purchase takes place (if compulsory) within the period fixed for the exercise of compulsory powers ;
- (c) that the mines or minerals are required for the purposes of the authorised undertaking. [468]

**Working of Mines Acquired.**—If a railway company acquire mines, it is *prima facie ultra vires* for the company to work them as part of their undertaking (r), but when the company have acquired lands for utilising them for the purposes of their undertaking and the lands contain minerals, the company may, it seems, meanwhile work the minerals (s). [469]

**Objections to Acquisition.**—If an owner objects to the purchase of his mines or minerals, on the ground that they are not genuinely required for the purposes of the undertaking, the onus of proof is upon him (t). [470]

**Acquisition of Support in Case of Non-purchase of Minerals.**—A railway company which does not consider it necessary to acquire mines and minerals together with the surface may postpone the exercise of its powers to obtain support from the mines and minerals until the owner gives notice of his intention to work them within the area of protection, but if the acquisition of the surface entails immediate interference with the working of the minerals, the owner is entitled to have compensation for that interference at the same time as the

(o) *Per LUXMOORE, J.*, in *Wath-upon-Deane U.D.C. v. John Brown & Co.*, [1936] 1 Ch. at p. 192 ; Digest Supp. See remarks under "Support," *ante*, pp. 208—210.

(p) *Errington v. Metropolitan District Rail. Co.* (1882), 19 Ch. D. 559, *supra*.

(q) *Thompson v. Hickman*, [1907] 1 Ch. 550 ; 38 Digest 252, 21.

(r) *L. & N.W. Rail. Co. v. Howley Park*, [1911] 2 Ch. D. at 119—120 ; 11 Digest 152, 345.

(s) *Hooper v. Bourne* (1880), 5 App. Cas. 1 ; 11 Digest 283, 2120.

(t) *Errington v. Metropolitan District Rail. Co.*, *supra*.

surface is acquired, under sect. 81 of the Railways Clauses Act (*u*), and the arbitrator assessing compensation under the Act may include in his award items for additional losses or expenses not then incurred but capable of being estimated with reasonable certainty, such as the sinking of a new shaft outside the land taken in replacement of a shaft situated on the land taken (*a*). [471]

**Acts incorporating Railways Clauses Act.**—The following are some of the Acts under which local authorities, in exercising powers of compulsory purchase, are required to incorporate the relative provisions of the Railways Clauses Act, in addition to those of the Lands Clauses Acts :

- (1) The L.G.A., 1933 (*b*), for all the purposes of the Act, and in the case of borough, urban or rural districts, for any of the purposes of the P.H.A.
- (2) The Development and Road Improvement Funds Act, 1909 (*c*), for the acquisition of land for improvement of highways and construction of new roads.
- (3) The Restriction of Ribbon Development Act, 1935 (*d*), under which the powers of compulsory purchase are as under sect. 160 of the L.G.A., 1933.
- (4) The Bridges Act, 1929, under which the Minister of Transport may make orders for compulsory purchase under the M. of T. Act, 1919 (*e*), which incorporates the conditions of the Development and Road Improvement Funds Act, 1909.
- (5) The Public Works Facilities Act, 1930 (continued by Expiring Laws Continuance Act, 1935), by Sched. I. (*f*).
- (6) The various Small Holdings, Housing and Town Planning Acts (generally in the Schedule setting out conditions of compulsory purchase). [472]

**Acts Incorporating Waterworks Clauses Act.**—On the other hand, the provisions of the Waterworks Clauses Act are incorporated :

- (1) In Acts or orders giving powers of compulsory purchase in connection with water supply and lighting by local authorities (*g*).
- (2) In relation to any sanitary work of a local authority carried out under the P.H. (Support of Sewers) Act, 1883, or under any Sanitary Act by authority of which such sanitary work has been or is constructed or is maintained (*h*).

These provisions apply to every sanitary authority as defined in the Act, whether the land on, in, over or under which such work is situate is or is not vested in or occupied by the local authority and is or is not wholly or partially dedicated to the public as a street, highway or public place (*i*). [473]

(*u*) 14 Halsbury's Statutes 63.

(*a*) *Whitehouse v. Wolverhampton and Walsall Rail. Co.* (1860), L. R. 5 Exch. 6.

(*b*) S. 160 (*b*) ; 26 Halsbury's Statutes 394.

(*c*) S. 5 and Sched. ; 9 Halsbury's Statutes 211, 217.

(*d*) S. 13 (1) ; 28 Halsbury's Statutes 91.

(*e*) S. 3 (1) (*d*) ; 8 Halsbury's Statutes 425.

(*f*) Sched. I., Part II. (1) (*b*) ; 23 Halsbury's Statutes 777.

(*g*) P.H.A., 1875 (Support of Sewers) Amendment Act, 1883, s. 2 ; 13 Halsbury's Statutes 798.

(*h*) *Ibid.*, s. 3 ; *ibid.*

(*i*) *Ibid.*

**Difference between Railways and Waterworks Clauses Acts.**—A difference to be noted between the effect of the Waterworks Clauses Act and the Railways Clauses Act is that if, in works under the Waterworks Clauses Act, the undertaker or local authority do not express willingness to treat after notice by a mine owner of his intention to work the mine, it will be lawful for the owner to work and to drain his mine "as if this Act and the special Act had not been passed" (k) whilst in similar circumstances under the Railways Clauses Act, it will be lawful for the owner to work his mine "so that the same be done in a manner proper and necessary for the beneficial working thereof and according to the usual manner of working such mines in the district where the same shall be situate" (l).

The effect of this difference, which had been much discussed in previous cases, was stated as follows by LUXMOORE, J., in *Wath-upon-Deane U.D.C. v. John Brown & Co. (m)*. "This section (sect. 79 of the Railways Clauses Act) confers on the mine owner a new power to work the minerals, and this is the only power on which he can rely. On the other hand, sect. 23 of the Waterworks Clauses Act, 1847, provides that the mine owner may work 'as if this Act and the special Act had not been passed.' These words seem to me to be apt not to create a new statutory power of working but to lift the embargo imposed by sect. 22 on the exercise of the right which existed apart from the Act." The logical result is that, in a case under the Waterworks Clauses Act, if damage is caused to works of an undertaker who has not treated for support, the undertaker may fall back upon his common law right of support "as if this Act and the special Act had not been passed," and as if, therefore, he were a purchaser by agreement, as in *New Moss Colliery v. Manchester Corporation (n)*, and the *Wath-upon-Deane Case* just quoted; whilst in a case under the Railways Clauses Act, he would be unable so to do, for the mine owner would be working under "a new statutory power of working" derived from the Railways Clauses Act itself and subject only to such obligations as to support as are provided in the Act. [474]

**Liability for Damage by Working "in Manner Authorised."**—It should be noted that by virtue of the new clause 79A (1), introduced into the Railways Clauses Act by sect. 15 of the Mines (Working Facilities and Support) Act, 1923 (o), if the mine owner "works any minerals lying under any part of the area of protection in the manner authorised by this Act, he shall nevertheless become liable . . . to contribute towards the expenses properly incurred . . . in making good any damage caused by such working" according to the percentage specified in the Act. [475]

#### MISCELLANEOUS

**Abatement of Nuisances.**—The saving for mines in sect. 834 of the P.H.A., 1875, has been replaced by sect. 109 of the P.H.A., 1936, which reads as follows:

"Sect. 109 (1) Nothing in this part of this Act shall be construed

(k) Waterworks Clauses Act, 1847, s. 23; 20 Halsbury's Statutes 194.

(l) Railway Clauses Act, 1845, s. 79; 14 Halsbury's Statutes 62.

(m) [1906] 1 Ch. at p. 196; Digest Supp.

(n) [1908] A. C. 117; 11 Digest 154, 556.

(o) 14 Halsbury's Statutes 389.

as extending to a mine of any description so as to interfere with, or obstruct the efficient working of, the mine, or as extending to the smelting of ores and minerals, to the calcining, puddling and rolling of iron and other metals, to the conversion of pig iron into wrought iron, or to the re-heating, annealing, hardening, forging, converting and carburising of iron and other metals, so as to interfere with or obstruct any of those processes.

(2) The Minister may by order :

- (a) extend the preceding sub-section to any other industrial process specified in the order ;
- (b) exclude from the application of that sub-section so far as smoke nuisances are concerned any process specified in the sub-section ;

and any order so made may contain conditions and limitations subject to which the inclusion or exclusion is to take effect :

Provided that an order made by the Minister under this sub-section shall be provisional only and shall not have effect until it is confirmed by Parliament."

Sect. 110 (2) "In determining for the purposes of this part of this Act whether the best practicable means have been taken for preventing, or for counteracting the effect of, a nuisance, a court shall have regard to cost and to local conditions and circumstances." [476]

As regards particularly any accumulation or deposit which is prejudicial to health or a nuisance, or dust or effluvia prejudicial to the health of, or a nuisance to, the inhabitants of the neighbourhood, the Act of 1936 provides that a local authority shall not, without the consent of the Minister, institute summary proceedings thereunder if proceedings might be instituted under the Alkali, &c., Works Regulation Act, 1906 (p).

Further, under sect. 94 (4) (g), it shall be a defence in proceedings in regard to accumulations and deposits, "for the defendant to prove that the accumulation or deposit complained of was necessary for the effectual carrying on of the business or manufacture and has not been kept longer than is necessary for the purposes of the business or manufacture and that the best practicable means have been taken for preventing it from being prejudicial to the health of, or a nuisance to, the inhabitants of the neighbourhood."

Similarly, as regards dust or effluvia, it will be a defence to prove that the best practicable means have been taken for preventing or counteracting the effect of such dust and effluvia. [477]

**Materials for Highway Repair.**—By sect. 54 of the Highway Act, 1835 (r), highway authorities are empowered, under the conditions specified, to search for, dig and get materials for the purpose of road repairs, and by sect. 57, if the authority, in the exercise of these powers, damages or endangers any mines or tin works or other works, it shall forfeit for every such offence a sum not exceeding £5, notwithstanding any liability to a civil action for damages.

Time in this case runs only from the actual happening of the damage (s). If compensation has been paid after a first subsidence,

(p) 18 Halsbury's Statutes 894.

(q) P.H.A., 1936 ; 20 Halsbury's Statutes 897.

(r) 9 Halsbury's Statutes 74.

(s) *Backhouse v. Bonomi* (1861), 9 H. L. C. 503 ; 17 Digest 90, 78.

the authority is not thereby relieved, for, if a further subsidence takes place without any further work or interference by the highway authority, such further subsidence would give rise to an independent cause of action (*l*). A claim by a surveyor of highways to a right to take stone without accounting was unsuccessful (*u*), and a claim of a right by prescription to carry away soil from another person's land without stint or limit was held to be bad (*a*). [478]

**Miners' Welfare.**—The Mining Industry Act, 1920 (*b*), provided for the establishment of a fund for the improvement of the social conditions of colliery workers and enabled local authorities (*c*) to submit schemes for any of the purposes to which the fund may be applied and to receive, in respect of such schemes as may be approved, grants in and from the fund. But in no case may a grant from the fund be made for the building or repairing of dwelling-houses. [479]

(*l*) *Crumble v. Wallsend Local Board*, [1891] 1 Q. B. 503; 17 Digest 91, 52.

(*u*) *Padwick v. Knight* (1852), 7 Ex. 854; 26 Digest 355, 807.

(*a*) *A.-G. v. Mathias* (1858), 4 K. & J. 579; 11 Digest 30, 335.

(*b*) S. 20 (1); 12 Halsbury's Statutes 176.

(*c*) *Ibid.*, s. 20 (4).

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## MINES, RATING OF

*See* RATING OF SPECIAL PROPERTIES.

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## MINIATURE RIFLE RANGES

*See* RIFLE RANGES.

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## MINISTERS OF RELIGION

*See* LOCAL GOVERNMENT ELECTORS.

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## MINISTRY OF AGRICULTURE AND FISHERIES

*See* AGRICULTURE AND FISHERIES, MINISTRY OF.

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## MINISTRY OF HEALTH

*See HEALTH, MINISTRY OF.*

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## MINUTES

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*See also titles :* MEETINGS ;  
RECORDS AND DOCUMENTS ;  
STANDING ORDERS.

**Preparation of Minutes.**—The minutes of the proceedings of a local authority (a) or of a committee thereof must be drawn up and entered in a book kept for that purpose (b). Minutes, according to the New Oxford Dictionary, are “a brief summary of events or transactions, especially the record of the proceedings at a meeting of a corporate body,” and should not be a verbatim record of all that was said or done at the meeting. They should, however, record the names of all members present at the meeting (c): it is not necessary, but it is sometimes desirable, to record the names of the officers present. Minutes should contain the exact wording of any resolution adopted at the meeting and refer to any report, document or correspondence read or produced and leading up to the resolution, but a document, *e.g.* a plan, need not form part of the minutes. Where, however, there is a right of inspecting minutes, it is submitted that sufficient information of the contents of

(a) “Local authority” means the council of a county, borough, urban or rural district or parish (L.G.A., 1933, s. 305).

(b) L.G.A., 1933, Sched. III., Part V., r. 3; 26 Halsbury's Statutes 501.

(c) *Ibid.*, Sched. III., Part V., r. 2.

any report, document or plan must be given to make the minutes comprehensible: see *Williams v. Manchester Corporation*, *infra*. [480]

**Entering of Minutes.**—Minutes when drawn up must be entered in a book kept for that purpose (*d*): they may be written directly in the book or printed and afterwards bound up together in the book. The courts (*e*) have refused to admit a collection of loose leaves fastened between two covers as satisfying sect. 120 of the Companies Act, 1929 (*f*), which is similar in effect to the rule in the Schedule cited in note (*d*), *supra*. There might not be the same objection to a book on the familiar loose-leaf principle, if it were made impossible for any person to remove or insert leaves, as by a lock of which the key was kept in proper custody. The M. of H. has intimated that such a minute book will be accepted as a book of account for purposes of district audit, if the pages are numbered consecutively and each is initialled by the presiding chairman when the minutes are confirmed. Minutes so kept can be permanently bound from time to time. [481]

**Minutes of Committees.**—Before the L.G.A., 1933, it was required by sect. 22 of the Municipal Corporations Act, 1882, as regards boroughs, and by sect. 75 of the L.G.A., 1888 (except to the extent that a county council might otherwise direct) as regards counties, that a committee, unless otherwise specially provided by statute, *e.g.* the watch committee of a borough having a separate police force (*g*), or a committee appointed in a borough for purposes of the P.H.As. (*h*) or in a district or parish for the purposes of those Acts or the Highway Act (*i*), must submit its acts to the appointing council for approval. The practice of local authorities varied, some requiring committees to submit full minutes, often very lengthy, for approval, and others, even where there was not complete delegation, being content with more brief and businesslike reports. Now that sect. 85 of the L.G.A., 1933, contains a single code for all committees of a local authority except those committees governed by some special statute, and has swept away the general requirement of approval of all the acts of a committee, there is less reason for requiring all minutes of a committee to be laid before the appointing council, where the resolution appointing the committee delegates full powers to the committee. [482]

**Authentication of Minutes.**—Minutes must be signed at the same or the next ensuing meeting of the local authority or committee as the case may be by the person presiding thereat, and any minute purporting to be so signed shall be received in evidence without further proof (*j*). The usual practice is to sign them at the next ensuing meeting. The minutes should be read or circulated before being signed as a true record; it is nowadays usual to circulate them to the members of the council or committee as the case may be, before the meeting at which they are to be signed, and to take them as read unless challenged. While clerical or other obvious errors may be corrected with the consent of the meeting, corrections of substance should only be made on a formal

(*d*) L.G.A., 1933, Sched. III., Part V., r. 3; 26 Halsbury's Statutes 501.

(*e*) *Hearts of Oak Assurance Co., Ltd. v. James Flower & Sons*, [1936] Ch. 76; Digest Supp.

(*f*) 2 Halsbury's Statutes 852; see L.G.A., 1933, s. 85.

(*g*) Municipal Corporations Act, 1882, s. 190; 10 Halsbury's Statutes 636.

(*h*) See P.H.A., 1875, s. 200; 13 Halsbury's Statutes 711.

(*i*) See L.G.A., 1894, s. 50; 10 Halsbury's Statutes 812.

(*j*) See L.G.A., 1933, Sched. III., Part V., r. 3.



motion. Model standing orders 5 and 7 issued from the M. of H. on December 31, 1934, provide for this matter. Inexperienced persons sometimes desire to reopen upon the minutes the discussion to which they relate; the sole purpose of reading (or circulating) and signing the minutes is, however, to establish their accuracy as a record. It is not necessary that the person signing the minutes should have been present at the meeting to which they relate; he signs them as the representative of the council or committee as the case may be at the meeting before which they come, and his signature is no more than the indication provided by the Act that in the opinion of that meeting the minutes are a correct summary of the proceedings to which they relate. It follows from r. 3 in Part V. of the Third Schedule to the L.G.A., 1933, that, if minutes of a committee are by way of report or otherwise laid before the council, it is not for the council to ratify their accuracy; they should have been signed as a correct record, at the meeting to which they relate or at the ensuing meeting of the committee, before submission to the council. Although the statute requires that minutes are to be drawn up, entered in a book, and signed, it does not appear that omission to comply would invalidate the proceedings or render them incapable of proof. If the minutes be lost or an item accidentally omitted, oral evidence may be received of what took place, and it is permissible to prove that proceedings other than those recorded took place (*k*). Model standing orders 3, 7 and 41, issued from the M. of H. on December 31, 1934, should be consulted; see also title **STANDING ORDERS.** [483]

**Inspection of Minutes.**—The minutes of proceedings of a local authority may at all reasonable hours be inspected by any local government elector for the area of the local authority on payment of one shilling and any such elector may make a copy thereof or extract therefrom. Any person having the custody of any such minutes who obstructs any person entitled to inspect or to make a copy thereof or extract therefrom in so inspecting or making a copy or extract is liable on summary conviction to a fine not exceeding five pounds. For this purpose the minutes of proceedings of a parish meeting are to be treated as the minutes of proceedings of a local authority (*l*). There is no statutory right to inspect the minutes of a committee; these may, however, become open to inspection if laid before the local authority so as to become part of the proceedings incorporated in the local authority's minutes. This is not in virtue of any provision applying to committee minutes, but the rule applies to any report or other document referred to in the council minutes and necessary to the understanding of the latter (*m*). Where functions are delegated to a committee, the minutes of the committee in relation to the delegated functions are the minutes of the council and so open to inspection. Where a ratepayer asked for his solicitors to take copies of the minutes

(*k*) *Re Fireproof Doors*, [1916] 2 Ch. 142; 9 Digest 518, 3398.

(*l*) See L.G.A., 1933, s. 288.

(*m*) *Williams v. Manchester Corpn.* (1897), 45 W. R. 412; 13 T. L. R. 299; 33 Digest 55, 336. The Divisional Court granted a declaration that burgesses were entitled to inspect in future [the minutes of] all acts of committees submitted to the council, whether those acts were finally approved or not. The words in [ ] occur in the W. R. only. It is clear from the interjections of CAVE, J., and the arguments of counsel on both sides, who did not seriously differ as to the principle to be applied, that the decision means that the minutes of the council must be full enough to be comprehensible, and that it has nothing to do with minutes of committees unless a committee reports its proceedings in minute form.

of a burial board, a *mandamus* was refused on the ground that the solicitors were acting for a company in another matter and the application was not made *bona fide* (n). The extent of the statutory right to inspect plans, documents, or correspondence referred to in the minutes appears to depend on the question how far the minutes are intelligible without doing so (o). The court will in its discretion refuse a *mandamus* to allow a person in litigation with a local authority to see a copy of counsel's opinion taken by the local authority and referred to in the minutes (p). The person desiring to inspect must be concerned with the particular matter, and must not be merely on a "fishing expedition" (q). The court has a discretion as to granting a *mandamus* and it ought not to be granted "if the application is actuated by any indirect motive" (r). Where the right of inspection exists, it is not a right exercisable only personally and not otherwise by the person interested; it may be exercised by a proper agent (s). [484]

**Submission of Minutes of Committees.**—It is suggested above that even where a council requires a committee, by standing order or otherwise, to report upon its exercise of powers entrusted to it, the report need not take the form of submitting the minutes of the committee's meetings. *A fortiori*, a committee exercising fully delegated powers in virtue of sect. 85 of the L.G.A., 1933, need not submit its minutes to the council. In fact, a requirement that a committee shall do so indicates confusion between reports and minutes properly so called. Some local authorities do, however, require their committees to report by way of submitting minutes. Where this is the practice, it seems that the statutory provision (t) that no business shall be transacted at a meeting of the council other than that specified in the summons relating thereto implies that members of the council should receive the actual minutes as part of the summons, the minutes having been as indicated above already signed under r. 3 in Part V. of the Third Schedule to the Act of 1933 as a true record. [485]

**London. L.C.C.**—The L.C.C. (General Powers) Act, 1893, Schedule, para. 10, provides that minutes shall be drawn up and printed and shall be signed at the same or next ensuing meeting by the chairman of that meeting. The usual provisions to the effect that, until the contrary is proved, matters contained in the minutes shall be received in evidence without proof of the holding of the meeting, etc., are contained in sect. 33 of the Metropolitan Board of Works (Money) Act, 1881. The Board were the predecessors of the L.C.C. (see L.G.A., 1888, sect. 40 (8)).

The provisions of the Municipal Corporations Act, 1882, sect. 233, permitting ratepayers to inspect, on payment of 1s., and to take copies of minutes are applied to the council by sect. 75 of the L.G.A., 1888. These provisions are similar to those of sect. 283 of the L.G.A., 1933, which replaces sect. 233 of the Municipal Corporations Act, 1882 (except as to London).

(n) *R. v. Wimbledon U.D.C., Ex parte Hatton* (1897), 77 L. T. 599; 13 Digest 349, 378.

(o) *Williams v. Manchester Corpn.* (1897), 45 W. R. 412; 13 T. L. R. 299.

(p) *R. v. Godstone R.D.C.*, [1911] 2 K. B. 465; 13 Digest 349, 379.

(q) *R. v. Hampstead Borough Council, Ex parte Woodward* (1917), 116 L. T. 213; 13 Digest 302, 341.

(r) *Ibid.*, per Viscount READING, L.C.J.

(s) *R. v. Bechcelly U.D.C., Ex parte Price*, [1934] 1 K. B. 333; Digest Supp.

(t) L.G.A., 1933, Sched. III., Part II., r. 2 (4); 26 Halsbury's Statutes 497.

As to minutes of committees, see Municipal Corporations Act, 1882, sect. 22 (5) and (6), applied to the L.C.C. by sect. 75 of the L.G.A., 1888. These provisions are similar to those in para. 3 of Part V. of the Third Schedule to the L.G.A., 1933. [486]

*Education Committee.*—Part I. of the Education Act, 1921, is, as regards London, unaffected by the repeals made by the L.G.A., 1933. Part II. of First Schedule (meetings of Education Committee) also still applies to London. [487]

*Metropolitan Borough Councils.*—The Metropolis Management Act, 1855, sect. 60, as applied by London Government Act, 1899, provides for minutes to be kept and signed by the members present or any two of them. The section also includes the usual provisions as to reception of minutes in evidence. Sect. 61, as applied, provides that members, owners of property and ratepayers may inspect and take copies free of charge. [488]

*Committees of Borough Council.*—There are no statutory provisions as to the minutes of committees of metropolitan borough councils. [489]

## MISFEASANCE AND NON-FEASANCE

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See also titles :

NEGLIGENCE ;	REPAIR OF ROADS ;
PUBLIC AUTHORITIES	STAFF ;
ACT ;	WORKMEN.

**Introduction.**—The term “misfeasance” is used to describe the improper performance of a lawful act, and “non-feasance” the failure or omission to perform some act which there is an obligation to perform, and both are concerned with the right of action for damages for injury caused by public bodies. The distinction originated with the question of the non-repair of a highway or bridge, but with the growth of the statutory duties imposed on local authorities during the nineteenth century attempts have been made to bring other duties of other authorities or of highway authorities in a different capacity under the same principle. Such attempts have probably received their final blow from the Court of Appeal in *Skilton v. Epsom and Ewell U.D.C.* (a). This article does not deal with any statutory immunity granted to a local authority from the ordinary remedies. These immunities depend on the particular terms of the statute in question, for though *LOPES, L.J.*, in *Robinson v. Workington Corporation* (b) used language from which

(a) [1936] 2 All E. R. 50 ; Digest Supp.

(b) See *Robinson v. Workington Corpn.*, [1897] 1 Q. B. 619 ; 38 Digest 55, 318.

might be inferred the existence of a wider principle the judgment of the Court of Appeal in *Baron v. Portslade U.D.C.* (c) appears to negative its existence. It seems that the common law immunity of a local authority from actions for injuries suffered through a state of affairs which is the result of a mere non-performance of a duty extends only to matters arising out of the failure to repair highways, and not to actions against a highway authority for injuries resulting from the non-repair of the highway when the highway authority itself had interfered with it not in that capacity but under statutory powers other than those of the Highway Acts (d). Some of the cases cited below turn upon the question whether there was any duty upon the local authority to perform the functions the non-performance of which gave rise to the actions. The cases considered below include the laying of sewers, as distinguished from the provision and clearing out of drains alongside roads, which has been held to be a duty of highway authorities *qua* highway authorities, the lighting of streets and the clearing away of refuse and of snow. It is to be noted that the L.G.A., 1929, which transferred to county councils in rural districts the duties of highway authorities, has complicated the question because formerly the district councils were the authorities for those duties as well as for functions of sanitary authorities which have not been transferred to county councils. [190]

The principle of law was that an action could not be maintained if it was based on neglect, refusal or omission to repair the road. In the first case in which it was sought to maintain such an action (e) the attempt failed, the *ratio decidendi* being that the inhabitants were not a corporation; reference was made to a passage in Brooke's Abridgment, written in 1573 (f), where it was said that "if a highway be out of repair, by which any horse is injured, no action lies," and the reason was given as the necessity of avoiding a multiplicity of actions. The court admitted the difficulty of reconciling this reasoning with the undoubted existence at common law of a remedy against the inhabitants by indictment, on the same facts. The logical difficulty is not lessened by the fact that an action would lie against the inhabitants for the doing of a wrongful act, or negligence, or the improper performance of some lawful act in the course of repair (g). In *Cowley v. Newmarket Local Board* (h) Lord HALSBURY, L.C., states that the reason against allowing the action in *Russell v. Men of Devon* was not merely technical. However this may be, the distinction became firmly established, and in *Young v. Davis* (i) it was held that a surveyor of highways was not liable to an action for injuries received through non-repair of a highway, although the technical point (the impossibility of suing an unincorporated body of inhabitants) did not apply. In *Gibson v. Mayor of Preston* (k), it was held that the P.H.A., 1848, which imposed upon

(c) [1900] 2 Q. B. 588; 38 Digest 153, 27.

(d) *Skilton v. Epsom and Ewell U.D.C.*, [1936] 2 All E. R. 50; 100 J. P. 231; Digest Supp.

(e) *Russell v. Men of Devon* (1788), 2 T. R. 607; 26 Digest 587, 2780.

(f) Title "Action sur le Case," p. 63.

(g) *Shoreditch Corp'n. v. Bull* (1804), 80 L. T. 210; 26 Digest 412, 1320.

(h) [1892] A. C. 345; 26 Digest 400, 1251.

(i) (1869), 2 H. & C. 107; 26 Digest 306, 1241. Justices can convict for non-repair only upon adopting the course provided by s. 94 of the Highway Act, 1835; 9 Halsbury's Statutes 105.

(k) (1870), L. R. 5 Q. B. 218; 26 Digest 357, 834. Followed in *Sydney Municipal Council v. Bourke*, [1895] A. C. 433; 26 Digest 400, 1254, where *Hartnall v. Ryde*

the corporation the duties and rights of surveyors of highways, did not impose a liability greater than had attached to the inhabitants at common law—did not, that is, give rise to any action for non-feasance. In *Cowley v. The Newmarket Local Board* (l) the same point was decided in regard to sect. 144 of the P.H.A., 1875 (m), which replaced the section of the Act of 1848. Meanwhile it had been decided in *Parsons v. St. Mathew, Bethnal Green* (n), that the immunity from action which the surveyor enjoyed belonged also to a corporate body; in *Cowley v. Newmarket Local Board* (o) that it extended to other bodies, unless a distinct intention to the contrary on the part of the legislature can be inferred upon a particular statute; and in *Maguire v. Liverpool Corporation* (p) that the liability of a corporation is of the same nature as the liability of the inhabitants to repair by the common law, and that therefore no action for damages for neglect to repair could be brought against them. [491]

**Non-feasance.**—Thus it was settled that no action for damages would lie against any highway authority for merely allowing their highways to get out of repair. The following are examples of cases where it has been decided that the action against the authority was based on non-feasance: in *Gibson v. Mayor of Preston* (q) and in *Short v. Hammersmith Corporation* (r) where the plaintiff had broken a leg by reason of the fact that the footpath had not been repaired; in *Cowley v. Newmarket Local Board* (s) where the path had been made unlevel by a resident; in *Sydney Municipal Council v. Bourke* (t) where a man had fallen from a van owing to a hole in the road; and in *Maguire v. Liverpool Corporation* (u) where the horse of a rider had been injured from the same cause. It was held in *Irving v. Carlisle R.D.C.* (a) that the authority was not liable where an accident was caused by non-repair of a ditch at the side of a highway, or, in *Masters v. Hampshire County Council* (b), where gullies were allowed to be overgrown, these matters falling palpably within the duties in connexion with highways. These cases can be distinguished from *Blackmore v. Mile End Old Town Vestry* (c) where the injury was caused by an iron flap covering a water meter box becoming worn smooth, and the highway authority being owners of the meter were held liable, but not as highway authorities; and *Thompson v. Brighton Corporation* (d) where the road had worn away so that a manhole had become uncovered, and it was held that the manhole was in good condition, so that as sewer authorities there was no negligence and as highway authorities there was non-feasance, and therefore no action lay. [492]

*Commissioners* (1863), 4 B. & S. 361; 26 Digest 399, 1242, a decision to the reverse effect was overruled.

(l) [1892] A. C. 345; 26 Digest 400, 1251.

(m) 13 Halsbury's Statutes 683.

(n) (1867), L. R. 3 C. P. 56; 26 Digest 399, 1244.

(o) *Supra*.

(p) [1905] 1 K. B. 767; 26 Digest 400, 1255.

(q) *Supra*.

(r) (1910), 104 L. T. 70; 26 Digest 401, 1257.

(s) *Supra*.

(t) *Supra*.

(u) *Supra*.

(a) (1907), 71 J. P. 212; 26 Digest 404, 1265.

(b) (1915), 84 L. J. K. B. 2194; 26 Digest 404, 1266.

(c) (1882), 9 Q. B. D. 451; 26 Digest 399, 1247.

(d) [1894] 1 Q. B. 332; 26 Digest 400, 1263.

It was decided by *Guilfoyle v. Port of London Authority* (e) that a body, which is not a highway authority and is charged by statute with the duty of repairing a bridge which is not a highway, may be liable in respect of mere non-feasance. As to what is a defect the matter was summed up by AVORY, J., in a case (f) where a passenger was injured in a motor omnibus which collided with an electric standard owing to the swelling in a storm of wood blocks set seventeen years before, where he said, "I can see no distinction between a road or highway which has become defective in consequence of the wood pavement bulging in certain places and a highway which has become defective in consequence of the surface having worn away or sunk away so that it is in holes in some places. . . . In the present case I can find no evidence that the use of the wood paving was improper so as to justify anyone in saying that the construction of the road was in its inception negligent." [493]

In regard to matters other than highway functions it has been held that the failure to exercise statutory powers or to perform statutory duties only renders the body having such powers or duties liable to a civil action if the statute intended to give a right of action to a person injured by such failure (g); when the work is done negligently there is of course, as mentioned below, a right as in regard to any negligent work. Whether or not a statute intends to give a right of action depends upon the wording of the particular statute.

In *Holborn Guardians v. St. Leonard, Shoreditch Vestry* (h), for instance, a case as to clearing away of refuse, under the Metropolis Management Act, 1855, MELLOR, J., said, "the removal of refuse is a part of the work of scavengers, and not of surveyors and, therefore, it is no answer to the present action that in the capacity of surveyors the defendants are exempt from liability for acts of non-feasance. The duty is imposed in clear terms, and vestries can enforce penalties by sect. 126 against persons obstructing them, and by sect. 135 against scavengers neglecting to execute what they have undertaken to fulfil." The later law on the subject appears to approximate still more nearly to that of negligence, for it was decided in *Papworth v. Battersea Corporation* (i) that it must be determined whether a gully was a thing for which the corporation were responsible in their capacity of road authority or in their capacity of sewer authority. In *Tregellas v. L.C.C.* (k), moreover, it was held that the L.C.C., as owners of a park, were not liable for non-feasance in not lopping a tree, for there was no statutory provision that they must lop trees, but it was pointed out that they would be liable if a branch in being cut down fell on a passer-by for they would then have been performing work in a negligent manner. [494]

Several cases have been decided on the lighting of streets. Where a vestry had discretion to turn out lights and an accident occurred

(e) [1932] 1 K. B. 336; Digest Supp.

(f) *Moul v. Croydon Corpn.* (1918), 82 J. P. 283; 26 Digest 401, 1260.

(g) *Maguire v. Liverpool Corpn.*, [1905] 1 K. B. 767; 26 Digest 400, 1255.

(h) (1876), 2 Q. B. D. 145; 26 Digest 300, 1246.

(i) [1915] 1 K. B. 302; 26 Digest 308, 1239. See also *Steel v. Dartford Local Board* (1891), 60 L. J. Q. B. 256; 26 Digest 300, 1249.

(k) (1897), 14 T. L. R. 53; 26 Digest 403, 1264; but see as to the need of making efficient flooring for the playing ground of a school, *Ching v. Surrey County Council*, [1910] 1 K. B. 786; 19 Digest 556, 17.

after these were turned out, it was held to be non-feasance (*l*), but it was misfeasance where an obstruction was improperly lit (*m*).

In *Sheppard v. Glossop Corporation* (*n*), BANKES, L.J., said, "The statutory duty in regard to lamps is admittedly to be found in sect. 161 of the P.H.A., 1875 . . . it confers on the respondents authority but imposes on them no obligation, to light their lamps. If in lighting the district they act negligently—if for instance they should erect a lamp-post and leave it unprotected in the middle of a highway . . . those would be negligent acts . . . But in my opinion this is not applicable when it is left to the discretion of the local authority how long they shall keep the lamps alight . . . or whether they shall remove an existing lamp-post." [495]

**Misfeasance.**—As has already been shown the liability of a local authority for misfeasance is that of any other body for work done in a negligent manner.

It was said in *Whitehouse v. Birmingham Canal Co.* (*o*), "Where work of a public character has been constructed under the authority of an Act of Parliament, a right of action for an injury not occasioned wilfully, nor by any act necessarily causing it, but arising from the user of the work, must be founded on negligence, and negligence is the essence of the action." Thus cases of misfeasance against local authorities cover negligent work in sewerage (*p*), in making or repairing roads (*q*), in raising footpaths (*r*), in leaving obstructions (*s*), or failing to take precautions in lighting, fencing or guarding work while in progress (*t*). In a case of road mending (*u*) Lord LINDLEY said, "There were three breaches of duty not mere omissions. These were: breaking up the road and putting it into such a state that it was not fit for traffic, restoring the road and not restoring it so as to be fit for traffic, and leaving a cartload of rubbish there which it was the duty of someone on the part of the defendant to clear away (I do not say the actionable duty) and that was not done." In *Maguire v. Liverpool Corporation* (*a*) VAUGHAN WILLIAMS, L.J., said, commenting on this, that it showed "that acts of misfeasance on the part of those who had the obligation to repair had reduced the road to a condition which made it unfit to use. It was held that they could not then say that the fact that they had omitted to remedy the wrong they had done entitled them to treat the action as an action for non-feasance as distinguished from an action for misfeasance." [496]

The right of action against an authority for acts of misfeasance

(*l*) *Young v. St. Mary's Islington, Vestry* (1896), 60 J. P. 821; 26 Digest 393, 1193.

(*m*) *Donaldson v. Wootwich Corp.* (1911), 75 J. P. Jo. 27; 26 Digest 393, 1194.

(*n*) [1921] 3 K. B. 132; 26 Digest 393, 1197.

(*o*) (1857), 27 L. J. Ex. 25; 86 Digest 25, 125. In most cases the Statute contains a compensation clause as regards injury not caused by negligence.

(*p*) *Winehouse v. Bushey U.D.C.* (1908), 72 J. P. 259; 26 Digest 411, 1314; *Cox v. Paddington Vestry* (1891), 64 L. T. 566; 26 Digest 411, 1315.

(*q*) *McClelland v. Manchester Corp.*, [1912] 1 K. B. 118; 26 Digest 405, 1270. *Thompson v. Bradford Corp.*, [1915] 3 K. B. 13; 26 Digest 406, 1273.

(*r*) *Rochford v. Essex County Council* (1918), 85 L. J. Ch. 281; 26 Digest 407, 1283.

(*s*) *Gould v. Birkenhead Corp.* (1909), 74 J. P. 105; 26 Digest 409, 1295.

(*t*) *Evans v. Rhymney Local Board* (1887), 4 T. L. R. 72; 26 Digest 406, 1280; *Oldham v. Sheffield Corp.* (1927), 91 J. P. 69; 36 Digest 52, 322.

(*u*) *Shoreditch Corp. v. Bull* (1904), 90 L. T. 210; 26 Digest 412, 1320.

(*a*) *Supra*.

does not arise until damage occurs (see as to this, judgment of COZENS HARDY, M.R., in the case next cited), and it may therefore happen that an authority are not liable for negligent performance of duty (or other wrongful action) by their predecessors. Thus it was held, in a case where injury was due to a drain said to be improperly laid, that a R.D.C. were not responsible in damages for an injury caused by a defective highway drain said to have been laid by a previous highway authority, before the council came into existence. The case, however, turned upon the words used by sect. 25 (1) of the L.G.A., 1894, in transferring to the council the "liabilities" of their predecessors, and in any such case the terms of the transferring statute should be considered (*b*). Where also a road was left unguarded while under repair, but the plaintiff, a waggoner, saw its condition and elected to go over it, he was held not entitled to damages (*c*). Where water-cress beds were injured by tar draining into them from the road on which it had been sprayed by an U.D.C., it was held that the council had power to tarp-spray the road, but they could not justify the damage to the water-cress beds without showing that it was a necessary consequence of the exercise of this power (*d*). [497]

The Public Authorities Protection Act, 1893 (*e*), by sect. 1 thereof (*f*), makes it necessary to commence an action for misfeasance against a local authority within six months from the date when the cause of action arose, or in the case of a continuing injury, within six months from its ceasing. The Act applies to the officers of public bodies and to persons acting under their direct mandate but not to independent contractors doing under contract, and for their own profit, the works which the public body is authorised to do (*g*). [498]

**Liability for Officers and Servants and Contractors.**—The law in regard to the liability of officers and servants of a local authority is contained in the titles NEGLIGENCE, STAFF and WORKMEN, where it is explained that the authority is responsible for the wrongs done by an officer and servant if done in the course of his work. In the case of an officer or servant, this rule applies also for acts of "casual" or "collateral" negligence, but not in the case of a contractor, where there is such an act as leaving a tool lying about in a highway (*h*). The authority will, however, be liable for accidents caused where the work of the contractor is carried out in a negligent manner, as where a trench is improperly filled in (*i*) or a gas main broken by negligent excavation (*k*), since the proper carrying out of the work is an essential part of the duty of the authority. [499]

(b) *Nash v. Rochford R.D.C.*, [1917] 1 K. B. 384; 26 Digest 405, 1272.

(c) *Torrance v. Ilford U.D.C.* (1909), 73 J. P. 225; 26 Digest 405, 1273.

(d) *Dell v. Chesham U.D.C.*, [1921] 3 K. B. 427; 26 Digest 408, 1290.

(e) See title PUBLIC AUTHORITIES PROTECTION ACT.

(f) 18 Halsbury's Statutes 455.

(g) *Kent County Council v. Folkestone Corp.*, [1905] 1 K. B. 620; 26 Digest 472, 1859, followed in *T. Tilling, Ltd. v. Dick Kerr & Co., Ltd.*, [1905] 1 K. B. 562; 26 Digest 420, 1389.

(h) *Penny v. Wimbledon Urban Council*, [1899] 2 Q. B. 72; 26 Digest 410, 1308.

(i) *Gray v. Pullen* (1864), 5 B. & S. 970; 34 Digest 165, 1279; *Hill v. Tottenham U.D.C.* (1898), 70 L. T. 495; 26 Digest 404, 1268.

(k) *Hardaker v. Idle District Council*, [1896] 1 Q. B. 335; 25 Digest 480, 62.



## MODEL BYE-LAWS AND CLAUSES

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NOTE.—For further information as to bye-laws, see the title BYE-LAWS, and each title in which the subject-matter of the bye-laws is dealt with.

### I. MODEL BYE-LAWS

**Introduction.**—The confirmation of bye-laws has been dealt with under the title BYE-LAWS (a), and it is there shown that before bye-laws become valid they must be confirmed by a Government department, usually the Home Secretary or the Minister of Health. Other confirming authorities described later are the Board of Education, the Board of Trade, the Minister of Agriculture and Fisheries, and the Minister of Transport. In order to assist local authorities to prepare the necessary bye-laws, models are issued by the confirming authorities, some of which can be purchased of H.M. Stationery Office, Kingsway, W.C.2, and others can be obtained from the Government department concerned. The

(a) See Vol. II., pp. 362—365.

M. of H. issue the largest number of model bye-laws, grouped in "series" according to subjects, and for many years it has been the practice in the Ministry, and of the Local Government Board to whose powers the Minister succeeded in virtue of the M. of H. Act, 1919 (*b*), to revise and re-issue the model series at short intervals (sometimes as short as twelve months) so as to embody the latest experience. A memorandum (*c*) showing the various series may be obtained from the Ministry. In this memorandum it is pointed out that before making bye-laws on any subject, local authorities should seriously consider whether their experience shows that bye-laws are essential. If bye-laws are proposed, they should be sent to the Ministry in draft before they are made, prints of the various model series being obtainable from the Ministry on paper of foolscap size with margins for notes. The prints should be used without being cut up or mounted; and a copy of any local Act which will affect them should accompany the draft bye-laws. The policy pursued by the Local Government Board and in the Ministry has been to simplify codes of bye-laws, and to cut out elaborate clauses not shown to be needed in the particular locality. In an introductory memorandum to model series XIII., on the subjects dealt with in the Housing Act, 1936, after quoting from *Stiles v. Galinski* (*d*) where Mr. Justice WILLS said, "I certainly object to legislation which is so unfair of itself that it requires to be justified by saying that in particular instances it will not be enforced," it is stated that in the model bye-laws an effort has been made to include in the model series only those requirements which are necessary. The series on Housing, XIII. and XIII.B., it is added, unavoidably impose penal obligations on some of the most helpless members of the community, and cannot be enforced without a detailed inspection involving—unavoidably again—intrusion on their privacy. Local authorities have, therefore, a special duty to be sure that in bye-laws of these two series nothing is included which places an unreasonable burden on those affected, or is not essential to the objects for which Parliament has authorised the bye-laws to be made.

Model bye-laws have not (*e*) been issued beyond those later mentioned, though bye-laws on other subjects may be made under various statutes. Where no model series exists the Government department concerned would on application supply the names of councils by whom bye-laws have recently been made. [500]

**Home Secretary as Confirming Authority.** *Good Rule and Government.*—By sect. 249 of the L.G.A., 1933 (*f*), county and borough councils may make bye-laws for the good rule and government of the whole or any part of their county or borough. The confirming authority is the Home Secretary, except that as respects bye-laws relating to public health or to any other matter which, in the opinion of the Home Secretary and the M. of H., concerns the functions of the

(b) 3 Halsbury's Statutes 416.

(c) This memorandum bears the code number C.1.a., and is constantly reprinted. It comprises a list of the model series numbered from I. to XXVII. (some numbers being duplicated, e.g. public slaughter-houses and private slaughter-houses), and shows whether they are on sale. It comprises also instructions for forwarding draft bye-laws to the Ministry.

(d) [1904] 1 K. B. 615; 38 Digest 164, 100.

(e) The list of model bye-laws is that current at February 1, 1937. The P.H.A., 1936, which will come into operation on October 1, 1937, will necessitate new series and the redrafting of existing series.

(f) 26 Halsbury's Statutes 489.

Minister rather than those of the Home Secretary, the confirming authority is to be the Minister. Bye-laws made by a county council under sect. 249 have no effect in a borough. Model forms of bye-laws are issued by the H.O., and include, as will be seen from pp. 239, 240 of Vol. VI., a great variety of subject-matters. It is pointed out that the model clauses cover most of the matters which have been dealt with by bye-laws in different areas according to local needs, and the forms are not intended for wholesale or indiscriminate adoption. Local authorities, it is said, should appreciate the strong objection to the making of bye-laws which local experience has not shown to be necessary. The forms recommended are the result of long experience, the wording having been changed from time to time to cure defects found in actual practice and to avert legal criticism. [501]

*Advertisements.*—The method of control of advertisements under the Advertisements Regulation Acts, 1907 and 1925, is by bye-laws (*g*) to be made by the local authorities who administer the Acts, namely borough councils, councils of urban districts of over 10,000 population, and elsewhere county councils (*h*). But a county council may delegate their powers to an U.D.C. who are not a local authority for purposes of the Act (*i*). Model bye-laws are issued for this purpose by the H.O. It is to be noted that they are merely intended to indicate the form which the bye-laws may take and are not recommended for adoption *en bloc*. [502]

*Petroleum Filling Stations.*—By sect. 11 of the Petroleum (Consolidation) Act, 1928 (*j*), county and borough councils may make bye-laws for regulating the appearance or prohibiting the establishment of petroleum filling stations, for the purpose of protecting the amenities of rural scenery or places of beauty or of historic interest. These are confirmed by the Home Secretary, and the H.O. have issued model bye-laws for the purpose. [503]

*Sea-Shore Regulations.*—By sect. 82 of the P.H.A. Amendment Act, 1907 (*k*), where that section has been put in force by an order of the Home Secretary, a borough or district council may make and enforce bye-laws for the prevention of danger, obstruction, or annoyance to persons using the sea-shore. These bye-laws, by sect. 9 of the Act (*l*), are to be confirmed by the Home Secretary, and model bye-laws for the purpose have been issued by the H.O. It is pointed out that bye-laws should be directed strictly to the needs of the particular case, and that the appropriate forms should be selected accordingly. [504]

*Luggage Porters.*—Model bye-laws have also been issued by the H.O. in regard to the power given to borough and district councils by sect. 84 of the P.H.A. Amendment Act, 1907 (*m*), to make bye-laws for regulating the conduct and charges of persons to whom a licence has been given to carry on the calling of a luggage porter, light porter, public messenger, or commissionaire. [505]

*Servants' Registries.*—By sect. 85 of the P.H.A. Amendment Act, 1907 (*m*), borough and district councils may make bye-laws as to the

(*g*) See title ADVERTISEMENTS, Vol. I., pp. 137—143.

(*h*) Advertisements Regulation Act, 1907, ss. 1, 7; 13 Halsbury's Statutes 908, 909.

(*i*) Act of 1925, s. 2; 13 Halsbury's Statutes 1114.

(*j*) 13 Halsbury's Statutes 1176.

(*k*) *Ibid.*, 941.

(*l*) *Ibid.*, 914.

(*m*) *Ibid.*, 942. Also put in force by an order of the Home Secretary.

books to be kept and other matters which the council deem necessary for the prevention of fraud or immorality in the conduct of a female domestic servants' registry office. Model bye-laws have been issued by the H.O., as the Home Secretary is the confirming authority. [506]

*Charity Collections.*—By sect. 5 of the Police, Factories, etc. (Miscellaneous Provisions) Act, 1916 (*n*), police authorities (*o*) may make regulations with respect to the places where and the conditions under which persons may be permitted to collect money or sell articles for the benefit of charitable or other purposes in streets or public places. These regulations have to be confirmed by the Home Secretary and the H.O. have published model regulations to be used for that purpose. [507]

*Minister of Health as Confirming Authority. Buildings and Streets.*—Of the bye-laws which can be made by local authorities, perhaps these bye-laws are of most importance to the public. No less than five of the model series of the M. of H. relate to new streets and buildings or new buildings and matters in connection with buildings (*p*). The bye-laws are made under sect. 157 of the P.H.A., 1875 (*q*), which allows a borough or district council to make bye-laws with respect to new streets and buildings dealing with the various matters mentioned in the section. Series IV. is for urban areas requiring a full series of building bye-laws, and includes bye-laws under sect. 157 and under sect. 23 (1) of the P.H.A. Amendment Act, 1890 (*r*), with respect to the level, width and construction of new streets and the provision of sewers, the structure of walls, foundations, roofs and chimneys of new buildings, for stability, health and the prevention of fires, the sufficiency of space about buildings, for a free circulation of air and for ventilation. Included also are bye-laws as to the drainage of buildings, the construction of water closets, earth closets, privies, ashpits and cesspools, and the keeping of water closets supplied with sufficient water for flushing, the giving of notices by persons intending to lay out a new street, construct a building, or execute other work, and the deposit of plans and sections. [508]

Series IVA. is for rural districts and deals only with buildings, and is used where powers as to new streets are not required in a rural district.

Series IVB. relates only to the drainage of existing buildings as provided for in sect. 157 (4) of the P.H.A., 1875, and sect. 23 (2) of the Act of 1890 which enables such bye-laws to affect buildings erected before the area became an urban district, or where powers under sect. 157 were applied to it.

Series IVC. is intermediate between IV. and IVA. and is suitable for adoption in rural districts of an urban character, residential urban districts or non-industrial boroughs.

Series IVD. relates to new streets. The right of the R.D.C. to make bye-laws as to the level, width and construction of new streets is not affected by the transfer to county councils of highways in rural

(*n*) 12 Halsbury's Statutes 865.

(*o*) The various police authorities are described in Part I. of the Third Schedule to the Police Pensions Act, 1921; 12 Halsbury's Statutes 804.

(*p*) They are numbered IV., IVA., IVB., IVC. and IVD. All can be purchased in the octavo edition.

(*q*) 13 Halsbury's Statutes 689. Applied to rural districts by S.R. & O., 1931, No. 580; 24 Halsbury's Statutes 262. After October 1, 1937, see P.H.A., 1936, s. 61; 29 Halsbury's Statutes 372, except as to streets.

(*r*) 13 Halsbury's Statutes 833, *ibid*.

districts (s), but before making bye-laws the district council must consult with the county council and if they do not within six months after a notice from the county council exercise the power, the county council may themselves make the bye-laws. [509]

*Cemeteries and Mortuaries.*—Series XIV. and XV. relate to cemeteries (t) and mortuaries (u). By sect. 141 of the P.H.A., 1875 (x), any borough or district council may, and if required by the M. of H. must, provide and fit up a mortuary, and may make bye-laws with respect to the management and charges for its use. They may also provide for the decent and economical interment, at charges to be fixed by the bye-laws, of any dead body received into a mortuary. By sect. 2 of the P.H. (Interments) Act, 1879 (y), these provisions are extended to a place for the interment of the dead, called a cemetery. See title CEMETERIES. [510]

*Cleansing of Footways and Pavements.*—Sect. 44 of the P.H.A., 1875 (z), authorises bye-laws on this subject, but they are very rarely made. If bye-laws are contemplated, the Minister should be asked for his views. [511]

*Common Lodging Houses.*—Sect. 80 of the P.H.A., 1875 (a), requires every borough and district council to make bye-laws for fixing the number of lodgers who may be received into a common lodging house, for the separation of the sexes therein, for promoting cleanliness and ventilation in such houses, giving notices and taking precautions in the case of any infectious disease and generally for the well ordering of such houses. The model bye-laws will be found in Series III. (b). [512]

*Escape from Fire in Factories.*—By sect. 15 of the Factory and Workshop Act, 1901 (c), district councils (d) have power, in addition to those they possess with reference to the prevention of fire, to make bye-laws providing for means of escape from fire in the case of any factory or workshop. The model bye-laws under this power are Series XVIII. (e). [513]

*Hackney Carriages, Horses, etc. for Hire.*—Series VII. embodies bye-laws for hackney carriages, and Series XI. for horses, ponies, mules, or asses, standing for hire. Both series may be purchased. Power to regulate by bye-laws the conduct of the proprietors and drivers, the number of persons to be carried, the position of the stands, the rates or fares to be charged, and the safe custody and re-delivery of property accidentally left in hackney carriages is given by sect. 68 of the Town Police Clauses Act, 1847 (f), which is incorporated in boroughs and urban districts with the P.H.A., 1875, by sect. 171 of that Act (g). The power to make bye-laws for regulating stands for horses, ponies, mules, or asses standing for hire, and fixing the rates

(s) See L.G.A., 1929, s. 30 (4); 10 Halsbury's Statutes 904.

(t) May be purchased from H.M. Stationery Office.

(u) Obtainable from the M. of H.

(x) 13 Halsbury's Statutes 682.

(y) *Ibid.*, 796. After October 1, 1937, see P.H.A., 1936, s. 108; 29 Halsbury's Statutes 458.

(z) *Ibid.*, 644.

(a) *Ibid.*, 658. After October 1, 1937, see P.H.A., 1936, s. 240.

(b) May be purchased.

(c) 8 Halsbury's Statutes 527.

(d) By s. 154, *ibid.*, 597, these include county as well as other boroughs.

(e) May be purchased.

(f) 19 Halsbury's Statutes 58.

(g) 13 Halsbury's Statutes 696.

of hire, and as to the qualification of the drivers and conductors and their good and orderly conduct while in charge, is given by sect. 172 of the P.H.A., 1875 (*h*). [514]

*Hop and Fruit Pickers.*—Series XX. (*i*) relates to the powers given to borough and district councils by sect. 314 of the P.H.A., 1875 (*h*), to make bye-laws for securing the decent lodging and accommodation of persons engaged in hop-picking within their area, which power was extended to persons engaged in the picking of fruit and vegetables by sect. 2 of the P.H. (Fruit Pickers Lodgings) Act, 1882 (*h*). [515]

*Housing.*—Two of the series of model bye-laws issued from the M. of H. relate to housing, namely Series XIII., under sub-sect. 1 of sect. 6 of the Housing Act, 1936 (*m*), for securing the improvement of housing conditions, in houses occupied or suitable for occupation by the working classes and Series XIII.B. under sub-sect. (3) of the same section, limited to such houses which are let in lodgings or occupied by members of more than one family. There is also a series of regulations, for which a model is issued, numbered XXII. (*n*) under sect. 12 of the Act of 1936, relating to underground rooms.

Series XIII. and XIII.B. may be purchased. The principal matters common to both these series of bye-laws are (i.) enforcing drainage and promoting cleanliness and ventilation; (ii.) requiring provision of closet accommodation, water-supply, and washing accommodation, and accommodation for the storage, preparation and cooking of food adequate for and readily accessible to the persons by whom the house is occupied; (iii.) keeping in repair and adequate lighting of any staircase; (iv.) cleansing and redecorating the premises at stated times; (v.) providing handrails for all staircases where necessary; (vi.) securing the adequate lighting of every room in the house; and (vii.) preventing nuisance arising in or from any part of a building in respect of which a closing order is in force. Series XIII.B., being limited to houses let in lodgings or occupied by more than one family, contains further clauses for the registration and inspection of such houses; for securing prevention of and safety from fire; and for securing where necessary separate accommodation (as enumerated under (ii.) above) for every family and for every part of the house which is occupied as a separate dwelling. [516]

Series XXII. above-mentioned implements the power given in regard to underground rooms by sect. 12 of the Housing Act, 1936 (*o*). By this section, a room, the surface of the floor of which is more than three feet below the surface of the part of the street adjoining or nearest to the room, or more than three feet below the surface of any ground within nine feet of the room, is to be deemed to be unfit for human habitation, if it is not on an average at least seven feet in height from floor to ceiling, or does not comply with such regulations as the local authority with the consent of the Minister may prescribe, for securing the proper ventilation and lighting of the room, and its protection from dampness, effluvia or exhalation. If the local authority, after being required to do so by the Minister, do not make such regulations as the Minister approves, the Minister may himself make them. [517]

(*h*) 13 Halsbury's Statutes 697.

(*i*) May be purchased.

(*h*) 13 Halsbury's Statutes 737. After October 1, 1937, see P.H.A., 1936, s. 270; 20 Halsbury's Statutes 496.

(*l*) *Ibid.*, 797. See last note.

(*m*) 20 Halsbury's Statutes 568.

(*n*) Application to be made to the M. of H.

(*o*) 20 Halsbury's Statutes 573.

*Markets.*—By sect. 167 of the P.H.A., 1875 (*p*), a borough or U.D.C. may make bye-laws with respect to any market belonging to them for the purposes set out in sect. 42 of the Markets and Fairs Clauses Act, 1847 (*g*), so far as these purposes relate to markets. Under that section bye-laws may be made for (i.) the regulation of the use of the market and the prevention of nuisances or obstructions in the market or its approaches, (ii.) fixing the days and the hours at which it shall be held, (iii.) regulating the carriers resorting to the market and the rates for carrying articles from the market; (iv.) the regulation of the use of weighing machines and prevention of the use of false or defective weights, scales or measures; and (v.) the prevention of the sale or exposure for sale of unwholesome provisions in the market or fair. Series V. of the model bye-laws relates to these powers, and may be purchased. [518]

*Nuisances.*—Bye-laws for the prevention of nuisances arising from snow, filth, dust, ashes and rubbish, and from keeping animals on any premises so as to be injurious to health may be made under sect. 44 of the P.H.A., 1875 (*r*). Series II. (*s*) relates to these powers. Series IIA. (*t*) relates to nuisances in connection with the removal of offensive or noxious matter under sect. 26 (1) of the P.H.A. Amendment Act, 1890 (*u*). [519]

*Nursing Homes.*—Series XXIVA. (*a*) of the model bye-laws relates to powers given by sect. 4 of the Nursing Homes Registration Act, 1927 (*b*), to local supervising authorities (*c*) to make bye-laws (i.) prescribing the records to be kept of the patients received into a nursing home, and, in the case of a maternity home, of any miscarriages occurring in the home, and of the children born therein and of the children so born who are removed from the home otherwise than to the custody or care of any parent, guardian or relative, and (ii.) requiring notification to be given of any death occurring in a nursing home. [520]

*Offensive Trades.*—Series XVI. (*d*) relates to offensive trades, and deals with the power given by sect. 118 of the P.H.A., 1875 (*e*), to borough and urban district councils to make bye-laws with respect to any offensive trades established with their consent in order to prevent or diminish their noxious or injurious effects. The preface to this series contains also a model form of order for declaring a trade offensive, and a special note on the trade of a fish-frier. [521]

*Parking Places.*—Powers are given to borough and district councils to make bye-laws in regard to parking places by sect. 68 (6) of the P.H.A., 1925 (*f*), and sect. 16 of the Restriction of Ribbon Development

(*p*) 18 Halsbury's Statutes 695. May be extended to a rural district with the consent of the M. of H. under s. 1 of the P.H.A., 1908; 13 Halsbury's Statutes 948.

(*g*) 11 Halsbury's Statutes 644.

(*r*) 18 Halsbury's Statutes 644, applied to rural districts by S.R. & O., 1931, No. 580; 24 Halsbury's Statutes 262. After October 1, 1937, see P.H.A., 1936, s. 81; 29 Halsbury's Statutes 387.

(*s*) Can be purchased.

(*t*) Application to be made to the M. of H.

(*u*) 18 Halsbury's Statutes 885. After October 1, 1937, see P.H.A., 1936, s. 82.

(*a*) Application to be made to the M. of H.

(*b*) 11 Halsbury's Statutes 787. After October 1, 1937, see P.H.A., 1936, s. 190.

(*c*) County and county borough councils, but a county council may delegate power to a district council, see s. 9 of the Act; 11 Halsbury's Statutes 788.

(*d*) May be purchased.

(*e*) 18 Halsbury's Statutes 671, as amended by s. 51 of the P.H.A. Amendment Act, 1907; 13 Halsbury's Statutes 930. After October 1, 1937, see P.H.A., 1936, s. 108.

(*f*) 13 Halsbury's Statutes 1146.

Act, 1935 (*g*). Model bye-laws XXVI. (*h*) relate to those powers. Under the Act of 1925 the local authority could make regulations as to the use of parking places and the classes of vehicles which might use them, and the charges to be made, but by sect. 16 (4) of the Act of 1935 the word "bye-laws" is substituted in sect. 68 (6) for the word "regulations," and the confirming authority is the M. of H. It was provided that any regulations in force under sect. 68 (6) of the Act of 1925 were to have effect as bye-laws for a period of twelve months after the passing of the Act of 1935, that is until August 2, 1936, so that these regulations are now spent. [522]

*Pleasure Grounds, Boating, etc.*—Series X. of the model bye-laws (*h*) relates to pleasure grounds (including public parks, etc.), and XA. (*h*) to recreation grounds, village greens, open spaces and public walks. Series XII. (*i*) relates to pleasure boats and vessels. Sect. 164 of the P.H.A., 1875 (*k*), gives local authorities power to purchase or take on lease, lay out, plant, improve and maintain lands for the purpose of being used as public walks or pleasure grounds, to support or contribute to their support, and to make bye-laws for their regulation, which may provide for the removal from the walk or pleasure ground of any persons infringing the bye-laws by any officer of the authority or constable. Sect. 8 (1) (*a*) of the L.G.A., 1894 (*l*), extends this power of making bye-laws to parish councils with respect to any recreation ground, village green, open space or public walk under their control or to the expense of which they have contributed. [523]

Sect. 172 of the P.H.A., 1875 (*m*), gives local authorities power to license the proprietors of pleasure boats and vessels and the boatmen or other persons in charge, and to make bye-laws for regulating the numbering and naming of the boats, etc., and the number of persons to be carried in them, and the mooring places, and for fixing the rates of hire, and the qualification and conduct of the boatmen or other persons in charge. By sect. 44 of the P.H.A. Amendment Act, 1890 (*n*), a borough or district council may make similar bye-laws where there are pleasure boats or vessels provided on a lake or piece of water in a park or pleasure ground provided by the council. [524]

*Public Bathing, Baths and Open Bathing Places.*—Series VIII. (*o*) and IX. (*p*) of the model bye-laws deal with public bathing, public baths and open bathing places. Series VIII. was authorised originally by sect. 69 of the Town Police Clauses Act, 1847 (*g*). The model bye-laws are nowadays confined to clauses for securing safety, most of the old-fashioned bye-laws on other topics being regarded as obsolete.

(*g*) 28 Halsbury's Statutes 275.

(*h*) May be purchased.

(*i*) Application to be made to the M. of H.

(*k*) 13 Halsbury's Statutes 693. Extended to rural districts by S.R. & O., 1931, No. 580; 24 Halsbury's Statutes 262.

(*l*) 10 Halsbury's Statutes 780.

(*m*) 13 Halsbury's Statutes 697. Extended to rural districts by S.R. & O., 1931, No. 580; 24 Halsbury's Statutes 262. Extended to rural districts as above.

(*n*) 13 Halsbury's Statutes 841.

(*o*) May be purchased.

(*p*) Application to be made to the M. of H.

(*g*) 13 Halsbury's Statutes 604. Incorporated in borough and urban districts with the P.H.A., 1875, by s. 171 of that Act; 13 Halsbury's Statutes 696, and extended by s. 92 of the P.H.A. Amendment Act, 1907; *ibid.*, 946, where that section has been put in force by order of the M. of H. After October 1, 1937, see P.H.A., 1936, s. 281.

L.G.L. IX.—16



Series IX. of the model bye-laws is little used under modern conditions. It relates to the power given by sect. 34 of the Baths and Washhouses Act, 1846 (*r*), to make and enforce bye-laws for the management, use and regulation of public baths and washhouses and open bathing places and of the persons resorting to them, as amended by sects. 86, 87 of the P.H.A., 1925 (*s*). [525]

*Removal of House Refuse, Cleansing of Cesspools, etc.*—Series I. and IA. (*t*) of the M. of H. relate to cleansing. The former deals with the power given to borough and district councils by sect. 44 of the P.H.A., 1875 (*u*), where they do not themselves undertake or contract for the removal of house refuse from premises and the cleansing of earth closets, privies, ashpits and cesspools, to make bye-laws imposing the duties of such cleansing or removal at such intervals as they think fit on the occupiers; the latter series, where sect. 26 of the P.H.A. Amendment Act, 1890 (*x*), has been adopted, imposes duties on the occupier, in connection with the removal of house refuse, so as to facilitate the work of collection. [526]

*Sanitary Conveniences and Lavatories.*—By sect. 20 of the P.H.A. Amendment Act, 1890 (*a*), and sect. 47 of the P.H.A. Amendment Act, 1907 (*b*), where the local authorities provide and maintain sanitary conveniences for public accommodation they may make bye-laws as to the decent conduct of persons using them. Series No. XXVII. relates to this subject (*c*). [527]

*Slaughter-Houses.*—Two of the model series relate to slaughter-houses, Series VI. (*d*) to slaughter-houses in general and Series VIA. (*e*) to public slaughter-houses. By sect. 169 of the P.H.A., 1875 (*f*), borough and urban district councils may provide slaughter-houses and must make bye-laws with respect to the management, and charges for the use, of any slaughter-houses so provided. Sects. 125 to 131 of the Towns Improvement Clauses Act, 1847 (*g*), with respect to any slaughter-houses in the district are also incorporated in the Act of 1875, and sect. 128 of the Act of 1847 gives a power of making bye-laws as to the licensing and registering of slaughter-houses and for keeping them clean, and supplying them with water. Bye-laws for inspection of slaughter-houses and the prevention of cruelty are authorised by the same section, but have been omitted from the model bye-laws since the Slaughter of Animals Act, 1933 (*h*), provided for these matters. [528]

*Smoke Abatement.*—Model bye-laws XXV. (*d*) relate to smoke abatement. By sect. 2 of the P.H. (Smoke Abatement) Act, 1926 (*i*), any borough or district council may, and if required by the M. of H.

(*r*) 13 Halsbury's Statutes 529. After October 1, 1937, see P.H.A., 1936, s. 223.

(*s*) *Ibid.*, 1154.

(*t*) Application for copies should be made to the M. of H.

(*u*) 13 Halsbury's Statutes 644. After October 1, 1937, see P.H.A., 1936, s. 72.

(*x*) *Ibid.*, 835.

(*a*) *Ibid.*, 831. Applied to rural districts by S.R. & O., 1931, No. 580; 24 Halsbury's Statutes 262.

(*b*) 13 Halsbury's Statutes 929. Under this section the bye-laws may extend to public lavatories. After October 1, 1937, see P.H.A., 1936, s. 87.

(*c*) Application to be made to the M. of H.

(*d*) May be purchased.

(*e*) Application to be made to the M. of H.

(*f*) 13 Halsbury's Statutes 696.

(*g*) *Ibid.*, 572—575.

(*h*) 26 Halsbury's Statutes 647.

(*i*) 13 Halsbury's Statutes 1159. After October 1, 1937, see P.H.A., 1936, s. 104.

must, make bye-laws regulating the emission of smoke of such colour, density or content as may be prescribed by the bye-laws. [529]

*Tents, Vans, Sheds, etc.*—These are authorised by sect. 9 of the Housing of the Working Classes Act, 1885 (*j*), and form Series XVII. of the model series (*k*). The bye-laws are for promoting cleanliness in, and the habitable condition of tents, vans, sheds, and similar structures used for human habitation, and for preventing the spread of infectious disease by the persons who inhabit them, and generally for preventing nuisances in connection with them. [530]

*Water, Prevention of Waste, Contamination, etc.*—Under local Acts many water undertakers have powers of making bye-laws for preventing the waste, undue consumption, misuse or contamination of water, and Series XXI. of the model bye-laws (*l*) is designed for use under this power. Examples of the clause in local Acts will be found in sect. 29 of the Exeter Corporation Act, 1935 (*m*), and sect. 25 of the Easington R.D.C. Act, 1935 (*n*). [531]

*Wireless Installations.*—By sect. 26 of the P.H.A., 1925 (*o*), a borough or district council may make bye-laws for the prevention of danger or obstruction to persons using any street or public place from posts, wires, tubes, aerials or any other apparatus in connection with or for the purposes of wireless installations stretched or placed on or over any premises and liable to fall on to any street or public place. Nothing in the bye-laws is to extend to any apparatus belonging to statutory undertakers. Series XXIII. (*p*) of the model bye-laws gives effect to this power. [532]

*Minister of Transport as Confirming Authority. Railways, Harbours and Canals.*—The model bye-laws issued by the Minister of Transport are chiefly for the guidance of railway, harbour and canal companies rather than local authorities. These comprise codes (*i*) for regulating travelling and using and working the railway under sects. 108, 109 of the Railway Clauses Consolidation Act, 1845 (*q*), as extended by sect. 7 of the Regulation of Railways Act, 1889 (*r*), (*ii*.) for the regulation of the conveyance and loading of explosives in harbours, or on railways, canals, wharves or docks under sects. 34 to 36 of the Explosives Act, 1875 (*s*), (*iii*.) for regulating the conveyance, loading and unloading of petrol in harbour under sect. 7 of the Petroleum (Consolidation) Act, 1928 (*t*), (*iv*.) for regulating the loading, conveyance and landing of petrol in and upon canals by sect. 9 of that Act. By sect. 38 of the Explosives Act, 1875 (*u*), notice of bye-laws about to be made under that Act must be published in such manner as to inform local authorities interested. [533]

*Tramways.*—By sect. 46 of the Tramways Act, 1870 (*x*), local authorities may make bye-laws or regulations as to the rate of speed, the intervals between trams and the traffic on roads, and the undertakers may make bye-laws for preventing nuisances or regulating the travelling in their tramcars. The Minister of Transport has published

(*j*) 13 Halsbury's Statutes 808. After October 1, 1937, see P.H.A., 1930, s. 268.

(*k*) May be purchased.

(*l*) May be purchased.

(*m*) 25 & 26 Geo. 5, c. cil. After October 1, 1937, see P.H.A., 1930, s. 132.

(*n*) *Ibid.*, c. civ.

(*o*) 13 Halsbury's Statutes 1121. An adoptive section.

(*p*) Application to be made to the M. of H.

(*q*) 14 Halsbury's Statutes 71, 72.

(*r*) *Ibid.*, 249.

(*s*) 8 Halsbury's Statutes 404—408.

(*t*) 13 Halsbury's Statutes 1174.

(*u*) 8 Halsbury's Statutes 400.

(*x*) 20 Halsbury's Statutes 26.

two sets of model bye-laws under the section, one for local authorities and one for companies or other undertakers concerned. [534]

*Road Traffic.*—In memo. No. 395 (Roads) issued by the Minister of Transport, dated March 16, 1934, specimen or model orders are given for restricting or regulating traffic to be made under sect. 46 of the Road Traffic Act, 1930 (a), as amended by sect. 29 of the Road and Rail Traffic Act, 1933 (b), which require confirmation by the Minister, and circular No. 413 (Roads) dated January 14, 1935, gives model or specimen orders relating to speed limits to be made under sect. 1 of the Road Traffic Act, 1934 (c), which require the Minister's consent before making. [535]

*Board of Education as Confirming Authority. Public Libraries.*—Bye-laws for regulating the use and protection of the contents of libraries, museums, art galleries and schools, and for enabling the officers and servants of the library authority to exclude or remove any person committing an offence against the Libraries Offences Act, 1898 (d), or against the bye-laws, may be made under sect. 3 of the Public Libraries Act, 1901 (e). Model bye-laws in regard to this power are issued by the Board of Education (f), to whom the duty of confirmation was transferred from the M. of H. in 1920 (g). [536]

*School Attendance.*—The Board of Education also issue (h) model bye-laws as to school attendance under sect. 46 of the Education Act, 1921 (i), which requires local education authorities to make and enforce bye-laws. County councils may make different bye-laws for different parts of their area. By sect. 50 of the Act (k) children in canal boats registered under the Canal Boats Acts, 1877 and 1884 (l), are subject to these bye-laws. [537]

*Board of Trade as Confirming Authority. Sale of Coal.*—The Board of Trade are the confirming authority for bye-laws made as to the sale of coal under sect. 28 of the Weights and Measures Act, 1889 (m). In this instance a model has not been drawn up, but bye-laws proposed are considered individually before confirmation. [538]

*Minister of Agriculture and Fisheries as Confirming Authority. Salmon and Freshwater Fisheries.*—By sect. 59 of the Salmon and Freshwater Fisheries Act, 1923 (n), a fishery board, or where there is no fishery board, the M. of A. and F., may make bye-laws for the various purposes indicated in the section for the protection of fish in fresh water (o). A memorandum on the drafting of such bye-laws has been issued (p). It is emphasised that the suggestions made are on points of wording and form only, as the Minister is required to act in a judicial capacity if objections are received, and it must not be assumed that the suggestions are authoritative or final. No similar model has been prepared for the framing of bye-laws under sect. 2 of the Sea Fisheries Regulation Act, 1888 (q), but regulations are in force (r) as to the making of these bye-laws, which require notice of a proposal to make

(a) 28 Halsbury's Statutes 643.

(c) 27 Halsbury's Statutes 535.

(e) *Ibid.*, 891.

(g) S.R. & O., 1920, No. 810.

(i) 7 Halsbury's Statutes 155.

(k) 13 Halsbury's Statutes 788, 803.

(m) 8 Halsbury's Statutes 814.

(p) 2nd edition, dated February, 1933.

(r) See S.R. & O., 1931, No. 91.

(b) 26 Halsbury's Statutes 894.

(d) 13 Halsbury's Statutes 878.

(f) Form 401 G.

(h) Form 2 B.L.

(j) *Ibid.*, 158.

(n) 20 Halsbury's Statutes 401.

(o) See title FRESHWATER FISHERIES.

(q) 8 Halsbury's Statutes 744.

bye-laws to be given to each member of the sea fishing committee and regulate the form of the notice of intention to apply to the Minister for the confirmation of bye-laws. [539]

*Land Drainage.*—By sect. 47 of the Land Drainage Act, 1930 (s), a drainage board may make bye-laws to secure the efficient working of the drainage system in their district and in particular for the purposes set out in the section. These must be confirmed by the M. of A. & F. The Minister has not issued model bye-laws of this kind, but codes of bye-laws are often based on those of the River Ouse (York) and the River Great Ouse Catchment Boards, which were themselves issued on a model code drawn up for the Catchment Boards' Association. [540]

## II. MODEL CLAUSES

*Parliamentary Bills.*—For some years it was customary for the Chairman of Committees of the House of Lords to issue a document called "Model Bills and Clauses," which was much used by Parliamentary agents and others in the preparation of Bills for local Acts. The last edition, which is dated 1921, comprised a model Railway and a model Tramway Bill, only a few of the clauses of which affected local authorities, and a model Gas Bill which could be adapted to a local authority undertaking a supply of gas. On the other hand, the model Water Bill and the clauses relating to the running of motor omnibuses were drawn primarily to fit a borough council. The last portion of the print contained twenty-five common form clauses on miscellaneous points. Of course, many of the clauses in the edition of 1921 have since been altered, and others are rendered unnecessary by subsequent general legislation, notably the P.H.As., 1925 (t), and 1936 (u). Parliamentary agents now obtain their precedents from recent local Acts, indicating, however, for the guidance of the Parliamentary officials, the precedent on which each clause of a Bill is based. The process of issuing model clauses was carried much further, however, in 1936, when a committee was set up to consider common form clauses in local legislation, under the chairmanship of Captain R. C. Bourne, M.P. (Deputy Chairman of Committees in the Commons), comprising—in addition to other members of the House—Sir Frederick Liddell, K.C.B., K.C., counsel to the Speaker, and representatives of Parliamentary agents and other interests.

The committee arranged many clauses which have been commonly allowed in recent sessions under two main headings—those which it considered might when inserted in a Bill normally be allowed by Parliamentary committees without special proof, and those which should not be allowed without proof of local need. Clauses under the first heading were again subdivided into those for which specified precedents satisfactory in form existed and those calling for revision which the committee indicated. Although the committee was careful to point out that its report (a) was not binding upon the committees considering particular Bills, there can be no doubt that its recommendations will be generally followed in future. The report is accompanied by a substantial volume (b) of common form clauses, in the shape

(s) 23 Halsbury's Statutes 563.

(t) 13 Halsbury's Statutes 1115.

(u) 29 Halsbury's Statutes 309 *et seq.*

(a) H.C. Paper 162 of 1936, price 4d. net.

(b) Standard Clauses, 1936, published by H.M.S.O., 10s. net.

in which the committee considered they could most suitably be embodied in legislation, and this constitutes in effect a set of model clauses similar to that issued in 1921 by the House of Lords but of wider scope. [540A]

**Town and Country Planning Schemes.**—Model clauses for use in preparing schemes were issued under earlier legislation from the M. of H., and re-issued after the passing of the Town and Country Planning Act, 1932 (c). Under sect. 6 of the Act the Minister's approval is required to a resolution to prepare a scheme, and under sect. 8 (d) also to the scheme itself, in which he may make modifications. In a prefatory note it is pointed out that the collection of clauses (c) is not to be regarded as constituting a model scheme suitable for universal adoption, but particular clauses may be adapted to meet special local circumstances. The Minister retains full discretion on the issue whether it is proper in a particular scheme to include or modify any individual clause, but the local authority should be careful not to omit provisions the inclusion of which is required by the Act (f). [541]

**Poor Law Schemes.**—The M. of H. also issues from time to time model schemes necessitated by new legislation, for example, the administrative schemes for poor law administration under sect. 4 of the L.G.A., 1929 (g). [542]

**Standing Orders.**—Model standing orders for the assistance of local authorities in conducting their proceedings and business were issued from the M. of H. to local authorities with circulars dated March 28, 1934, and December 31, 1934. Each series can be purchased of H.M. Stationery Office. The first series related to contracts of local authorities only, and was necessitated by sect. 266 of the L.G.A., 1933. The second is a comprehensive series for the purposes of para. 4 in Part V. of the Third Schedule to that Act (h). See titles MEETINGS and STANDING ORDERS. [543]

(c) 25 Halsbury's Statutes 484. See also title TOWN PLANNING SCHEMES.

(d) *Ibid.*, 480.

(e) To be purchased from H.M. Stationery Office. Price 2s. net. New Model Clauses were issued in February, 1937.

(f) See e.g. ss. 12 (3), 13 and 19 (2) (iii.) of the Act; 25 Halsbury's Statutes 486, 487, 494.

(g) 10 Halsbury's Statutes 885.

(h) 26 Halsbury's Statutes 447, 501.

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## MODEL SINKING FUND CLAUSES

*See BONDS; BORROWING; MORTGAGES.*

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## MODEL STOCK CLAUSES

*See STOCK.*

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## MONUMENTS

*See* ANCIENT MONUMENTS AND BUILDINGS ; MEMORIALS,  
WAR AND OTHER.

## MORAL DEFECTIVES

*See* MENTAL DEFECTIVES.

## MORTGAGE OF RATES

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## MORTGAGES

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*See also titles :*

BORROWING ;  
CONSOLIDATED LOANS FUND ;  
CORPORATE LAND ;

INTEREST ;  
PUBLIC WORKS LOANS ACTS.

**Introduction.**—Of the various methods by which loans are raised by local authorities, none has been so popular as the mortgage, an instrument charging the whole or part of the property, assets and revenues of the borrower as security for the repayment of the loan. Many local authorities have no experience of any other form of

borrowing (a). For many years local authorities (*i.e.* urban and rural sanitary authorities and their successors) borrowed money for authorised purposes by means of mortgages issued under the authority of sects. 236 and 237 of the P.H.A., 1875 (b). These provisions took the place of the powers given by the Commissioners Clauses Act, 1847 (c), the P.H.A., 1848 (d), and by other Acts which were consolidated and amended by the P.H.A., 1875. They were extended, in their application, to county councils by sect. 69 of the L.G.A., 1888 (e), and to parish councils by sect. 12 of the L.G.A., 1894 (f); and the code of which they formed part was from time to time adopted by statutes which conferred fresh borrowing powers on borough, urban and rural district councils. In addition, power to borrow by mortgage was conferred on municipal corporations by sect. 106 of the Municipal Corporations Act, 1882 (g). Suggested forms of mortgage were prescribed by the P.H.A., 1875, and the Municipal Corporations Act, 1882, although under the latter Act the form was applicable only to loans raised for purposes connected with borough bridges (h). [544]

The security given to the lender by the mortgage varied according to the purpose of the loan and the statute under which it was granted. Thus, a borough council borrowing as a public health authority would charge as security the district fund and general district rate, whereas if they borrowed as a municipal corporation the borough fund and borough rate would be charged as security for the loan. In practice also the mortgages were identified with a specific loan sanction. This restriction was found to complicate procedure, and especially hindered the adoption of improved methods of borrowing; in consequence many local authorities obtained powers by local Act to issue a common form of mortgage, charging *all* the rates and revenues of the authority (i). The merger of all rate funds into one general rate fund, under sect. 10 of the R. & V.A., 1925 (j), partly removed the general disability, and the reform was completed by the establishment of a single code of borrowing powers in Part IX. of the L.G.A., 1933 (k). Sect. 197 (1) of that Act provides that all moneys borrowed by a local authority, whether before or after the commencement of the Act, are to be charged *indifferently on all the revenues (l) of the authority.*

(a) The following figures show the net outstanding mortgage debt for various groups of local authorities at recent dates and its relation to their total net debt :

Authorities.	Amount of Mortgage Debt. £	Percentage of Total Debt.
County Borough Councils - - - - -	271,403,600	54
Non-County Borough Councils - - - - -	106,658,936	88
Urban District Councils - - - - -	150,194,216	96
County Councils (excluding London) - - - - -	56,025,028	77
Rural District Councils - - - - -	78,535,040	90

(18th Annual Report of the M. of H., 1931-32, Cmd. 4113, 1932.)

(b) 18 Halsbury's Statutes 724.

(c) *Ibid.*, 421.

(d) 11 & 12 Vict. c. 63.

(e) 10 Halsbury's Statutes 742.

(f) *Ibid.*, 784.

(g) 10 Halsbury's Statutes 608.

(h) S. 119 and Sched. VIII.; 10 Halsbury's Statutes 613, 605.

(i) St. Helen's corporation was the first authority to obtain such a power, in 1898.

(j) 14 Halsbury's Statutes 681.

(k) 26 Halsbury's Statutes 412.

(l) "Revenues" in relation to a local authority includes the county fund or general rate fund, as the case may be, and all rates, Exchequer contributions and other revenues, whether arising from land or undertakings or from any other source, receivable by the local authority (L.G.A., 1933, s. 218; 26 Halsbury's Statutes 424).

Sects. 205 to 214 of the L.G.A., 1933, contain provisions relating to mortgages, and it is with these provisions that the following notes are mainly concerned. [545]

**Purpose and Priority.**—Sect. 196 (1) of the 1933 Act makes it clear that a local authority may raise money by mortgage for *any* purpose for which they are authorised to borrow money. Mortgages rank equally, without any priority, with all securities created by the local authority, except as to any priority existing at the commencement of the 1933 Act, or as to any right to priority conferred by a security created before that date (*m*). A parish council may not borrow otherwise than by way of mortgage. [546]

**Form of Mortgage.**—A mortgage created under Part IX. of the L.G.A., 1933, must be by deed in the prescribed form or in a form to the like effect, and under sect. 305, the M. of H. has prescribed the following form (*n*).

*Form of Mortgage.*

"By virtue of the Local Government Act, 1933, and of other their powers in that behalf then enabling the Mayor Aldermen and Burgesses of the Borough of acting by the Council (hereinafter referred to as 'the Corporation') [the Council of the of (hereinafter referred to as 'the Council')]] being a local authority within the meaning of that Act in consideration of the sum of pounds (hereinafter referred to as 'the principal sum') paid to the treasurer of the [Corporation] [Council] by (hereinafter referred to as 'the Mortgagee') [the receipt of which sum is hereby acknowledged] hereby grant and assign unto the Mortgagee [his] executors administrators and assigns such proportion of the revenues of the [Corporation] [Council] as the principal sum bears or will bear to the whole sum which is or will be charged on the said revenues To Hold unto the Mortgagee [his] executors administrators and assigns from the date of these presents until the principal sum shall be fully paid and satisfied with interest thereon at the rate of per centum per annum [such interest to be paid half-yearly on the day of and the day of in each year].

"[And it is hereby agreed that the principal sum together with the interest accrued thereon shall be repaid at (state place and method of repayment)].

"[Provided always and it is hereby agreed and declared that the before-mentioned time for repayment may be extended to such later date or dates and upon any such extension the before-mentioned rate of interest may be altered to such other rate or rates of interest as may from time to time be agreed between the [Corporation] [Council] and the Mortgagee and stated in an endorsement to be made hereon under the hands of the Mortgagee and the [Town] Clerk [of the Council] for the time being and that upon any such endorsement being made the provisions stated therein shall be incorporated herewith and shall take effect as though they had been originally inserted herein.]

"In witness whereof the [Corporation] [Council] have caused their common seal to be hereunto affixed this day of nineteen hundred and ."

Practical considerations suggest that this form should be varied in certain respects. It might, for example, be desirable to insert the date on which the money lent is received by the local authority, *i.e.* the date from which interest is to run, and to include particulars of the period of the loan. Subject to these modifications the form is suitable for universal use, although it would appear that local Act provisions under which a particular form of mortgage is prescribed are not superseded by sect. 205 and the regulations made thereunder and that such forms may continue to be used. In the case of a loan

(*m*) June 1, 1934.

(*n*) By the Local Government (Form of Mortgages and Transfers) Regulations, 1934 (S.R. & O., 1934, No. 620).



made by the Public Works Loan Commissioners the mortgage is to continue to be in the form prescribed under the Public Works Loans Acts, 1875 to 1882 (*o*), and is identified with a particular loan sanction. (See title PUBLIC WORKS LOANS ACTS.) [547]

**Mode of Issue.**—The mortgage is an elastic form of instrument, as to amount, terms and period of currency. There is no minimum amount for which a mortgage may be issued, although in practice this would seldom be less than £50; the maximum amount is conditioned only by the amount of unexercised borrowing powers in hand. The terms of issue may provide for repayment of the principal sum by instalments (whether equal or unequal) during the currency of the loan, or in whole at maturity; they may include a "break" clause giving either side or both sides the right at fixed or determinable intervals to make or demand repayment; and they may provide for a rate of interest on the loan which may be varied from time to time by mutual agreement, on notice given by one to the other. The periods of the loans may vary from 6 months to 80 years. Loans raised by mortgage usually take one of the following forms:

1. A loan for the exact amount of a specific borrowing power or powers, repayable by instalments over the period or periods authorised by the borrowing power(s);

2. A loan for a fixed period of years, which is repayable in full at the end of that term, and is not related to any particular borrowing power. The first type is in general use by the smaller authorities, while the second is the common method adopted by the larger authorities. The raising of "general" loans involves certain accounting problems to secure the relation of borrowing transactions to capital requirements, and this is effected either through the operation of a Consolidated Loans Fund (see title), or a Mortgage Pool (see *post*, p. 255). Mortgages may be issued without public advertisement, although many authorities attract subscriptions of adequate sums for "short-term" mortgages by means of small advertisements in national or local newspapers. But the main sources from which loans (of both types mentioned above) are raised on mortgage are the large banks, insurance companies, savings banks, building societies, and similar institutions. These loans are frequently the subject of competitive tenders, sought either by direct invitation, by advertisement, or through a financial broker to whom a procuration fee is paid by the borrowing authority. In the case of the smaller authorities considerable sums in the aggregate are borrowed on mortgage from the Public Works Loan Commissioners (see title PUBLIC WORKS LOANS ACTS). [548]

Another source of borrowing is between one local authority and another, either as an investment, *e.g.* of a trading reserve fund, or in accordance with statutory powers authorising the lending of money to other authorities, *e.g.* a county council have power to borrow for the purpose of lending to parish councils (*p*); such inter-authority loans are secured by mortgage. To many authorities borrowing on mortgage is a continuous process, determined in intensity by the prospective capital requirements, the amount of maturing liabilities (*i.e.* mortgage loans falling due for repayment) and money market conditions; the management of these borrowing operations is facilitated through the maintenance of a mortgage pool (see *post*, p. 255).

(*o*) 12 Halsbury's Statutes 241—279.

(*p*) L.G.A., 1938, s. 195 (*d*); 26 Halsbury's Statutes 412.

As a rule each lender is required to complete a form of offer to lend, with particulars of the amount and period of the loan, and full name(s) and address(es) of the proposed mortgagee(s). The terms and conditions of the loan are subject to mutual agreement between local authority and lender, but in the case of general loans, the local authority may adopt (and vary from time to time as market conditions alter) a scale of borrowing periods with which the rate of interest will vary (e.g. loans may be accepted for 5 years at 3 per cent., for 10 years at  $3\frac{1}{2}$  per cent., for 20 years at  $3\frac{1}{2}$  per cent. and so on). On deposit of the amount of the loan, either by direct remittance to the authority or transmission through the banking system to the authority's bank, the treasurer issues an "interim receipt" for the money. The deed is prepared by the clerk in accordance with the instructions of the treasurer, sealed with the due authority of the council, stamped with the appropriate stamp duty, and issued to the mortgagee(s) in exchange for the interim receipt. [549]

Generally a standard form of mortgage is printed and used, but sometimes the mortgagee (e.g. a building society) requires a special form of deed to be prepared at the local authority's expense. If this cannot be avoided, it should at least be ensured that the special form does not differ materially from the prescribed form, and in view of the general security authorised by sect. 197 (1) of the L.G.A., 1933 (see *supra*), any reference to any specific purpose for which the money may be deemed to have been borrowed (e.g. recital of statutory borrowing powers or loan sanctions) should be excluded. "Earmarking" of this nature may prove most inconvenient to the authority (q). Incidentally it may be mentioned here that lenders are protected by the terms of sect. 203, L.G.A., 1933, which provides that a person lending money to a local authority shall not be bound to inquire whether the borrowing of the money is or was legal or regular or whether the money raised was properly applied, and shall not be prejudiced by any illegality or irregularity in such matters, or by the misapplication or non-application of any such money.

Variation of the standard form of deed will be necessary where it is agreed that repayment of the loan shall be made by instalments at yearly or half-yearly intervals throughout the period of the loan; where repayment is to be made by the "annuity" method, i.e. by equal instalments of an amount comprising both principal and interest, details of the instalments are commonly scheduled to the deed. [550]

**Stamp Duty.**—Each mortgage deed must be stamped with duty at the rate prescribed by the Stamp Act, 1891 (r), for mortgages, bonds, etc. (s). In the absence of agreement to the contrary, the stamp duty is payable by the local authority to the Commissioners of Inland Revenue, payment being evidenced by a stamp impressed on the deed. The deed must be stamped within thirty days of execution, in order to

(q) See title BORROWING, Vol. II., p. 206.

(r) 16 Halsbury's Statutes 618.

(s) Where the principal sum secured does not exceed £10, the duty is 3d.; exceeding £10 and not exceeding £25, 6d.; exceeding £25 and not exceeding £50, 1s. 3d.; exceeding £50 and not exceeding £100, 2s. 6d.; exceeding £100 and not exceeding £150, 3s. 9d.; exceeding £150 and not exceeding £200, 5s.; exceeding £200 and not exceeding £250, 6s. 3d.; exceeding £250 and not exceeding £300, 7s. 6d.; exceeding £300 for every £100, and also for any fractional part of £100, of the amount secured —2s. 6d. (Stamp Act, 1891, Sched. I.; 16 Halsbury's Statutes 656.)

avoid liability to penalty under sect. 15 of the Stamp Act, 1891 (*t*). On the endorsement of terms of renewal on a mortgage deed, a 6d. stamp is affixed.

Although in the case of stock and bonds it is usual for the local authority to bear the stamp duty on transfers, this is not usually so with mortgages, and the stamp duty payable on transfer of a mortgage would, ordinarily, be paid by the transferee. Transfers of mortgages are, however, infrequent, as these securities are not ordinarily dealt in on the Stock Exchanges. [551]

**Transfer of Mortgage.**—The person entitled to a mortgage created by a local authority may transfer it by deed (endorsed on the mortgage deed or as a separate instrument) in the prescribed form or in a form to the like effect (*u*). The form prescribed (*x*) is as follows:

*Form of Transfer of Mortgage.*

"I [the within-named] of in consideration of the sum of pounds paid to me by of (hereinafter referred to as 'the transferee') do hereby transfer to the transferee [his] executors administrators and assigns [the within-written security] [the mortgage number of the revenues of the Mayor Aldermen and Burgesses of the Borough of ] [council of the of ] bearing date the day of [created for the purpose of securing the repayment of the sum of with interest] and all my right and interest under the same subject to the several conditions on which I hold the same at the time of the execution hereof and I the transferee for myself my executors administrators and assigns do hereby agree to take the said mortgage security subject to the same conditions.

Dated this day of nineteen hundred and ."

[552]

**Register of Mortgages.**—The clerk must keep at the office of the authority a register of mortgages (*z*). This requirement applies only to mortgages created under Part IX. of the L.G.A., 1933, but the M. of H. is empowered to make regulations applying the provisions to mortgages created under Acts in force at the commencement of the L.G.A., 1933 (*a*). Within fourteen days after the date of a mortgage the clerk must cause an entry to be made in the register of the number and date thereof, of the names and descriptions of the parties, and of the amount borrowed, as stated in the deed. In practice the register will also include particulars as to the rate of interest, terms and date of repayment, and as to the inclusion in the deed of any "break clause." On production to the clerk of a mortgage deed together with a duly executed deed of transfer, the clerk must cause an entry to be made in the register of the date of the transfer and of the name and description of the person becoming entitled thereunder to the mortgage. A similar procedure must be followed in the case of transmission of a mortgage by the death of a person solely entitled thereto or of the survivor of persons jointly entitled thereto, when probate of the will or letters of administration of the estate of the deceased must be produced with the mortgage deed; and in the case of any other transmission (*e.g.* through bankruptcy), when satisfactory evidence of the transmission must be produced with the mortgage deed. A fee not exceed-

(*t*) 16 Halsbury's Statutes 623.

(*u*) L.G.A., 1933, s. 206; 26 Halsbury's Statutes 417.

(*x*) By the Local Government (Form of Mortgages and Transfers) Regulations, 1934 (S.R. & O., 1934, No. 620).

(*z*) L.G.A., 1933, s. 207 (1); 26 Halsbury's Statutes 417.

(*a*) S. 207 (5); *ibid.*, 418.

ing 5s. may be charged for registering a transfer or transmission. Any change of name or address of a mortgagee must be notified forthwith to the clerk, who must alter the register accordingly on being satisfied as to the change. Any such entry in the register as to transfer, transmission or change of particulars will also be endorsed on the mortgage deed and attested by the signature of the clerk. The register must be open at all reasonable hours to public inspection, without payment.

There are penalties for breach of these provisions; any person who, having custody of the register, refuses inspection to any person is liable, on summary conviction, to a fine not exceeding £5; while any person who, being required under the section to make an entry in the register, refuses or wilfully neglects so to do, is liable, on summary conviction, to a fine not exceeding £20. (Sect. 207.)

No notice of any trust, expressed, implied, or constructive, affecting any mortgage, may be entered in the register or be received by the authority or any officer of the authority (sect. 209). [553]

**Rectification of Register.**—A local authority may treat as exclusively entitled to a mortgage, in relation to which entries have been duly made in the register, the person appearing by the latest of those entries to be entitled thereto (sect. 208 (1), L.G.A., 1933).

Any person whose name is, without sufficient cause, entered in or omitted from the register, or in respect of whom default or unnecessary delay occurs in making any entry, may apply to the High Court (or to the county court where the sum involved does not exceed £500) for an order for the rectification of the register; or the application may be made by the local authority (sect. 208 (2)). On any such application the Court may decide any question relating to the title of any party thereto to have his name entered in or omitted from the register, and may decide generally any other question relevant to the rectification of the register (sect. 208 (3)). [554]

**Interest.**—Interest at the rate declared in the mortgage deed is paid half-yearly, as a rule, by means of crossed warrant sent by post to the mortgagee at the address shown in the register, unless the mortgagee has requested that payment be made to a nominee or direct to his banking account. Income tax is deductible from all interest payments, except that interest payable under a mortgage securing a loan from the Public Works Loans Commissioners is payable without deduction of tax. (See also title INTEREST.) Where repayment of the loan is made by instalments throughout its currency, the half-yearly payment may consist partly of principal and partly of interest; tax is, of course, to be deducted from the interest portion only, and the certificate of deduction of tax which is usually forwarded to the mortgagee should refer to interest only.

It is important that advantage should be taken of the existence of any option (i.e. break clause) in the mortgage deed which permits the local authority at a fixed or determinable date to secure, by agreement with the mortgagee, a reduction in the rate of interest payable. A break clause may, of course, operate both ways, and conditions may justify the mortgagee in giving, at the appropriate time, notice requiring repayment, in default of agreement to increase the rate of interest payable. (See title INTEREST, Vol. VII., p. 325.) Any variation in the rate of interest payable should be the subject of a suitable endorsement on the mortgage deed, certified by the clerk.

Where two or more persons are jointly entitled to a mortgage, any one of them may give an effectual receipt for interest, unless any other of them has given to the local authority notice in writing to the contrary (L.G.A., 1933, sect. 210 (1)). This provision does not, however, relieve the local authority from obtaining the receipt of *all* the mortgagees on repayment of the principal moneys (see *post*). In the case of any money, whether principal or interest, payable to an infant, the receipt of his guardian is to be a sufficient discharge (sect. 210 (2)). [555]

**Enforcement of Security.**—In addition to the remedies available to a mortgagee under the general law (*e.g.* foreclosure on the property of the local authority) in the event of default in payment of any sum due under the mortgage deed, a mortgagee of a local authority has a special right conferred by sect. 211 of the L.G.A., 1933 (*b*). If any principal money or interest due under a mortgage is unpaid for a period of two months after written demand, the person entitled thereto may, without prejudice to any other remedy, apply to the High Court for the appointment of a receiver; but no application may be considered unless the sum or sums due to the applicant or applicants amount to not less than £500. The court may if they think fit appoint a receiver on such terms and with such powers as the court think fit, and may confer upon him any such powers to collect, receive and recover the revenues of the local authority, to make, collect and recover rates, and to issue and enforce precepts, as are possessed by the local authority or their officers. [556]

**Repayment.**—Every sum borrowed by a local authority by way of mortgage must be paid off either by equal yearly or half-yearly instalments of principal, or of principal and interest combined, or by means of a sinking fund, or partly by one of those methods and partly by another or others of them (*c*). The comparative merits of these methods of repayment and the effect of the provisions of sects. 213—215 of the L.G.A., 1933, are discussed in the title *Borrowing* (Vol. II., pp. 210—215) (*d*). In practice the application of the statutory conditions as to repayment must be considered from two aspects, viz. (1) from the point of view of the contract between the local authority and the mortgagee, and (2) in relation to the obligation to provide out of revenue during the period of the loan sanction moneys sufficient to repay the amount of the loan which has been applied to authorised purposes in the exercise of that sanction. Where the loan is raised for the exact amount of a specific borrowing power, and is repayable, whether by instalments or by means of sinking fund, during the period authorised by the loan sanction, these two points of view are completely reconciled. But this is not generally the case; in the modern development of borrowing technique, the borrowing and repayment of money are divorced from the application of capital moneys in the exercise of statutory borrowing powers and their subsequent discharge; and in the majority of cases the chief importance of the repayment provisions of Part IX. of the L.G.A., 1933, is in their application to

(b) 26 Halsbury's Statutes 419.

(c) S. 212 (1); *ibid.* 420.

(d) The M. of H. has prescribed 3 per cent. as the rate of accumulation to be used for accumulating sinking funds formed under L.G.A., 1933, s. 213—see p. 213, Vol. II. (Local Government (Sinking Funds, Rate of Accumulation) Regulations, 1934; S.R. & O., 1934, No. 1320.)

the annual provision to be made out of revenue moneys during the sanctioned period towards the discharge of the expenditure authorised by the statutory borrowing power. The manner in which such borrowings are managed as part of a "mortgage pool" is described below. [557]

When the loan secured by a mortgage has been fully repaid, whether in full at maturity or by instalments during its currency, the deed is customarily discharged by simple endorsement by the mortgagee acknowledging that he has received the principal sum and interest thereon, and surrendered to the local authority; it is not necessary that the discharge should be executed under seal, and it does not require to be stamped. The deed is then cancelled, and an appropriate entry made in the register of mortgages. When mortgage loans are repaid out of the proceeds of an issue of stock, as happens frequently, a rebate of 2s. per cent. on the nominal amount of stock applied to the repayment may be obtained from the capital stamp duty of 2s. 6d. per cent. which is payable on the issue of stock, on production of the cancelled mortgages (*c*).

As an alternative to repayment at maturity, the mortgage may be renewed by agreement with the mortgagee, for such period and at such rate of interest as may be agreed, the terms of renewal being endorsed on the deed and certified by the clerk; such endorsement must bear a 6d. stamp. [558]

**Mortgage Pool.**—The principle of pooling loans is adequately described in the title CONSOLIDATED LOANS FUND (Vol. IV., pp. 492 *et seq.*). The mortgage pool is a limited form of consolidated loans fund, with the important distinction that, as its name implies, stock is excluded from its scope, and it may be established without special statutory authority. A "general loans pool" is prescribed by the Borough Accounts Order, 1930 (*f*), for those borough councils whose accounts are wholly subject to district audit, and by implication its establishment is permitted to other local authorities. The "general loans" merged in the pool comprise all loans raised by a local authority in the exercise of their statutory borrowing powers by mortgages [or bonds] which are available in law for the purpose of (1) all or any of their statutory borrowing powers; or (2) all or any of their statutory borrowing powers under a particular enactment, provided that in the latter case the loans raised under each particular enactment must be separately grouped within the pool. Thus, if "earmarking" of loans has been avoided—or can be removed where it exists by suitable agreement with lenders—"general loans" will include all borrowings, other than stock, housing bonds, and loans from the Public Works Loan Commissioners. But there would be little or no advantage in including within the pool loans which, although not earmarked, are repayable by instalments. As pointed out in the M. of H. memorandum (*g*), which accompanied the Accounts Order, where loans are raised on conditions as to amount, period, recall and method of repayment designed to suit the convenience of the lenders rather than that of the borrowers, any unnecessary earmarking to borrowing powers leads to much complication in the accounts and to

(*e*) Under s. 10, Finance Act, 1907; 16 Halsbury's Statutes 737. But this rebate cannot be claimed where mortgage loans are repaid out of the proceeds of further mortgage loans.

(*f*) S.R. & O., 1930, No. 30, Art. 9 and Sched. II.

(*g*) Memo. 150 (Accounts), dated January 29, 1930.

other disadvantages. The general loans pool is designed to secure simplicity in management of loan transactions and presentation of accounts, and economy in the use of the local authority's capital monies, including sinking funds. [559]

The Second Schedule to the Accounts Order(s) requires a separate cash account to be kept of all moneys raised by general loans, and of the application and repayment of such moneys. Whenever any such moneys are applied by way of "advance" in the exercise of a statutory borrowing power (h) the amount of the advance must be transferred from this separate account to the appropriate cash account and recorded in the accounts as a loan to the borrowing account concerned. A register of advances must be kept, recording each advance and the arrangements made for complying with the conditions as to repayment which are imposed by the statutory borrowing power to which the advance relates (e.g. sinking fund contributions provided by means of annual "fractional" or "annuity" instalments (i) (see title CONSOLIDATED LOANS FUND)). Thus while statutory borrowing powers in general may be said to be exercised by the raising of general loans, a particular statutory borrowing power is exercised by making an "advance" from the loans pool to the appropriate borrowing or capital account. All sums provided towards the repayment of advances must be carried to the sinking fund accounts relating to the borrowing powers so exercised; and they must then be shown upon the balance sheets as sinking funds unapplied unless or until (1) they are transferred to the separate account of general loans for immediate application in loan repayment, or (2) they are withdrawn under statutory authority for use in the exercise of a statutory borrowing power. But there is no reason, apparently, why there should be any delay in transferring these repayment moneys to general loans account; if the repayment moneys are transferred direct from borrowing accounts to the general loans account, where they will form part of the pool available for loan repayment or further advances, the need for sinking fund accounts will be obviated, and, as in the consolidated loans fund, sinking funds as such will be eliminated. This procedure is in effect a development of the utilisation of sinking funds for new capital purposes, as to which see title BORROWING, Vol. II., p. 216. The statement as to borrowing powers which is to be prepared by the chief financial officer under the regulations must include the following particulars: (1) the date, authority, purpose, period and amount of each statutory borrowing power exercised by the use of general loans; (2) the amount advanced in each year in the exercise of each borrowing power; and (3) the amount transferred in each year in repayment of the advance and the amount of the advance outstanding at the end of the year; and at the foot of the statement there must be entered a note showing the agreement of the total of general loans outstanding with the sum of the outstanding advances and the unapplied balance (if any) of the separate account of general loan money. [560]

(h) "Statutory borrowing power means any power of borrowing or re-borrowing money for the time being available under any existing or future Act of Parliament or provisional order or under any order or sanction of any Government department made or given by authority of any existing or future Act of Parliament or provisional order" (S.R. & O., 1930, No. 30, Art. 2 (2)).

(i) The rate of accumulation prescribed for accumulating sinking fund contributions is 3 per cent. (Local Government (Sinking Funds, Rate of Accumulation) Regulations, 1934; S.R. & O., 1934, No. 1320).

The interest payable in each year on general loans must be apportioned between the borrowing accounts in the proportion which the outstanding advances to each borrowing account bear, either at the beginning or at the close of the year, to the total of the outstanding advances to all the borrowing accounts, due account being taken of all advances outstanding for a part only of the year. The Model Scheme of Loan Consolidation requires the basic apportionment of interest to be made according to the balances outstanding at the beginning of the year, and this would appear to be the more equitable method to adopt. The Accounts Order makes no provision for apportioning expenses (e.g. stamp duty, procuration fees, and establishment charges), but these should also be apportioned over the borrowing accounts, e.g. in proportion to the interest allocations. [561.]

The management of a general loans pool should be conducted on the same plan as that described as appropriate to a consolidated loans fund (see title, Vol. IV., p. 504), with the exception that the general loans account may not be fed by the proceeds of a stock issue.

The external transactions of the pool, between the local authority and lenders, are recorded only in the general loans account. New loan moneys are paid into the account, and maturing loans are repaid out of it. There is no direct relation between any loan and any particular purpose to which loan money is applied, for all loans—and repayment moneys—lose their identity in the pool. Provided that advances and repayments of advances conform strictly with the terms of the statutory borrowing powers exercised, there must always be an exact correspondence of outstanding loans (plus overdrawn bank balance or minus balance unapplied on general loans account) and the aggregate total of outstanding advances. While it is generally convenient to maintain a bank overdraft on general loans account, circumstances may produce a substantial balance in hand, e.g. where borrowing has taken place in advance of requirements, and in such a case it would be competent to make an investment (j) of the surplus money, on account of sinking funds.

Finally, the local authority may utilise by way of investment in the loans pool any moneys forming part of any superannuation, pension, reserve or other similar fund which they are authorised under any enactment to use in the exercise of any statutory borrowing power, and which are not otherwise required. [562.]

**Trustee Status.**—There is a strange anomaly in the law governing the trustee status of mortgages in that by sect. 1 (1) (p) of the Trustee Act, 1925 (k), they are only available for investment by trustees if the local authority issuing them have been authorised by the M. of H. to issue local (housing) bonds under sect. 122 of the Housing Act, 1936 (l). Thus it may be that the mortgages of an U.D.C. of small area are trustee securities, while those of the county council of which the urban district council's area forms part have not trustee status, merely because the county council have not obtained authority to issue housing bonds.

(j) In statutory securities. See s. 213 (2) of the L.G.A., 1933; 26 Halsbury's Statutes 420.

(k) 20 Halsbury's Statutes 97. A trustee is authorised to invest... in any local bonds issued under the Housing (Additional Powers) Act, 1919 (now the Housing Act, 1936), and mortgages of any fund or rate granted after the passing of that Act under the authority of any Act or Provisional Order by a local authority (including a county council) which is authorised to issue local bonds under that Act.

(l) 29 Halsbury's Statutes 652.

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Moreover, it is apparently immaterial that housing bonds should actually be issued—it is only necessary that authority to issue them should have been given (see title *HOUSING BONDS*, Vol. VII., p. 97). Although it was urged before the Trustee Securities Committee that this anomaly should be removed by the grant of trustee status to all mortgages of local authorities, the committee recommended in their report (*m*) that no further authorisation to issue housing bonds should be given by the M. of H. to any local authority which have not already been so authorised, or if such authorisation be given, it should not carry with it the privilege of trustee status to such bonds or to the authority's mortgages; and further that an authority which have obtained the right to issue housing bonds and have not exercised it should not thereby retain trustee status for their mortgages.

Mortgages are, however, within the scope of the definition of "statutory securities" (*n*), and are thus available for investment as between one local authority and another, *e.g.* of unapplied mortgage sinking funds (*o*) or of stock sinking funds (*p*). [563]

**Mortgage of Corporate Land.**—Mortgage is one of the methods by which a municipal corporation may with the consent of the M. of H. dispose of corporate land, under sect. 172 (8), L.G.A., 1933 (see title *CORPORATE LAND*). Part IX., L.G.A., 1933, does not apply to such mortgages, except that particulars thereof must be included in any return of borrowings and repayment provisions which the M. of H. may require to be furnished under sect. 199 (see title *BORROWING*, Vol. II., p. 205). [564]

**Mortgage of Sewage Disposal Land.**—An additional exception to the general rule of mortgages secured indifferently on all the revenues of an authority is found in the provisions now enacted in sect. 310, P.H.A., 1936 (*q*), authorising the council of a borough, urban district or rural district who own any land, works or other property for the purposes of sewage disposal to borrow money on mortgage thereof for any purposes of the P.H.A. for which they might borrow under the L.G.A., 1933. Sanction of the M. of H. is *not* required for such borrowing, but the provisions of Part IX., L.G.A., 1933, as to the making of returns (see above) to the M. of H. apply thereto. Any money so borrowed must be repaid within thirty years and must be applied to purposes of the P.H.A., 1936, for which money may be borrowed. [565]

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(*m*) Cmd. 3107, 1928. No action has been taken on the Committee's recommendations.

(*n*) "Any securities in which trustees are for the time being authorised by law to invest trust moneys, and any mortgage, bond, debenture stock, stock or other security created by a local authority, other than annuities, rent-charges, or securities transferable by delivery." (L.G.A., 1933, s. 218).

(*o*) Under L.G.A., 1933, s. 213 (2).

(*p*) Under the Local Authorities (Stock) Regulations, 1934 (S.R. & O., 1934, No. 619).

(*q*) 29 Halsbury's Statutes 519 (re-enacting s. 235 of the P.H.A., 1875).

## MORTMAIN

See also titles :

ACQUISITION OF LAND (OTHER THAN (COMPULSORY) ; COMMON LAW CORPORATIONS ;	CONVEYANCING ; GIFTS OF LAND AND OTHER PROPERTY.
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For the law of mortmain so far as it affects a local authority, reference must be made to the Mortmain and Charitable Uses Acts, 1888 and 1891, and the Mortmain and Charitable Uses Act Amendment Act, 1892 (a).

The ancient statutory prohibitions against the acquisition of land by corporations or alienation *in mortua manu* now consolidated in these statutes apply to all local authorities which are bodies corporate, and thereunder land cannot be assured to or for the benefit of or acquired by a corporation except under authority of a licence from the Crown or of a statute and is to be forfeited to the Crown if attempted to be so assured (b). The term assurance is widely defined (c) and includes assurances by deed, will, or other instrument. Land, as defined (d), does not include money secured on land or other personal estate arising from or connected with land. The statutes also lay down certain requirements as to assurances of land for charitable uses, which are fully dealt with in a preceding volume (e).

The Act of 1888, sect. 6 (f), exempts from the prohibitions against holding in mortmain, referred to above, an assurance by deed of land for a public park, a schoolhouse for an elementary school, or a public museum, but the deed if made otherwise than in good faith for full and valuable consideration must be executed not less than twelve months before the death of the assessor and must be enrolled in the books of the Charity Commissioners within six months of the execution of the deed. By the Act of 1892 (g) this exemption is extended to any assurance by deed of land to any local authority (h) for any purpose for which it is empowered by statute to acquire land and as respects such deeds the requirement as to execution within twelve months before the death of the assessor is not to apply. Enrolment of voluntary deeds is, however, necessary. [566]

As to assurances of land by will, the Acts also provide for an exemption limited to twenty acres for a public park, two acres for a

(a) 2 Halsbury's Statutes 385 *et seq.* Generally as to the law of mortmain, see 8 Halsbury (2nd ed.), 82.

(b) Mortmain and Charitable Uses Act, 1888, s. 1 ; 2 Halsbury's Statutes 385.

(c) *Ibid.*, s. 10 ; but with regard to a lease for fourteen years, see *Trust Corp'n. v. Rowe*, [1902] 2 K. B. 709 ; 13 Digest 371, 1027.

(d) Mortmain and Charitable Uses Act, 1891, s. 3 ; 2 Halsbury's Statutes 396.

(e) See title CHARITIES, Vol. III., p. 82.

(f) 2 Halsbury's Statutes 380.

(g) *Ibid.*, 398.

(h) Defined s. 2.

museum and one acre for a schoolhouse, and, further, the will (or a previous devise (*i*)) must be executed not less than twelve months before the assessor's death and enrolled in the books of the Charity Commissioners within six months of testator's death.

The practical importance of the restrictions as regards normal purchases of land for the statutory functions of local authorities is reduced by the exceptions applied by the Act of 1892, and to these must be added further express exemptions. For example, the Education Act, 1921, sect. 117 (*k*), wholly removes from the requirements of the Acts of 1888, 1891 and 1892, assurances to any local authority of any land, or personal estate to be laid out in land, for educational purposes, but wherever the purposes are those for which the local authority is empowered by statute to acquire land, the deed or assurance is to be transmitted to the offices of the Board of Education to be recorded.

It has long been usual for the charter of incorporation of a municipal borough to contain a limited power to acquire land without licence in mortmain, and such powers are expressly saved by the Acts (*l*). It was, however, occasionally found that the power was absent, or too limited for some desirable object, and it was chiefly for this reason—to avoid the necessity for scrutinising old charters in every case—that the L.G.A., 1933, enacted that the council of a borough, equally with every other local authority (*m*), might hold land “for the purposes of their constitution” without licence in mortmain (*n*). Where there is no parish council in a rural parish the representative body is given power to hold land “for the purposes of the parish” without such a licence (*o*).

A similar exception is contained in the Working Class Dwellings Act, 1890 (*p*), as to assurances of land for providing working-class dwellings; and the Housing Act, 1936, sect. 150, further extends this exception. Reference may also be made to the Town and Country Planning Act, 1932, Sched. II., para. 16 (*q*), and to the Commons Act, 1876, sect. 8; the Commons Act, 1899, sect. 7 (*r*); and to earlier exemptions in the School Sites Act, 1844, sect. 3 (*s*); and 1849, sect. 4 (*s*); and the Recreation Grounds Act, 1859, sects. 2, 7 (*t*). It seems that specific provisions of this kind will not be needed in future legislation, in view of the general power above-mentioned, which is given by the L.G.A., 1933. [567]

London.—The L.C.C. has by sect. 79 of the L.G.A., 1888 (*u*) (still unrepealed as regards London), the same power as a provincial county

(*i*) Act of 1888, s. 6.

(*k*) 7 Halsbury's Statutes 193.

(*l*) Mortmain and Charitable Uses Act, 1888, s. 12; 2 Halsbury's Statutes 392, and see also the L.G.A., 1933, s. 171; 26 Halsbury's Statutes 400.

(*m*) Defined s. 305; 26 Halsbury's Statutes 465.

(*n*) For boroughs, the power is in sub-s. (3) of s. 17. It is repeated separately for each class of local authority, being as regards local authorities other than the councils of boroughs a re-enactment of certain legislation. See also s. 171 of the Act.

(*o*) S. 47 (3); 26 Halsbury's Statutes 529.

(*p*) 2 Halsbury's Statutes 393.

(*q*) 25 Halsbury's Statutes 529.

(*r*) 2 Halsbury's Statutes 533, 609. (Amended L.G.A., 1933; 26 Halsbury's Statutes 524, 529.)

(*s*) 7 Halsbury's Statutes 233, 285.

(*t*) 12 Halsbury's Statutes 369, 370.

(*u*) 10 Halsbury's Statutes 750.

council, to hold land without licence in mortmain. The Common Council of the City of London, as a sanitary authority and as port health authority, and metropolitan borough councils, have by sect. 273 of the P.H. (London) Act, 1936 (*a*), the like power for purposes of that Act. The City corporation holds charters authorising the holding of certain lands without licence in mortmain. As regards other lands and purposes, the Commissioners of Sewers of the City and the metropolitan vestries were by sect. 99 of the P.H. (London) Act, 1891 (*b*), given power to hold land without licence in mortmain for the purposes of their duties (not in terms limited to those arising under the Act). This power was transferred to metropolitan borough councils on their creation by the London Government Act, 1899, by sect. 4 of that Act (*c*) and (as regards the City) to the Court of Common Council by the City of London Sewers Act, 1897 (*c. exxxiii., s. 2*). [568]

(*a*) 26 Geo. 5 & 1 Edw. 8, c. 50.

(*b*) 11 Halsbury's Statutes 1080 (now repealed by the P.H. (London) Act, 1936).

(*c*) *Ibid.*, 1227.

## MORTUARIES

See also titles :

BURIAL AND CREMATION ;  
BURIALS AND BURIAL GROUNDS ;  
CEMETERIES ;

CORONERS ;  
CORPSES ;  
POST-MORTEM EXAMINATIONS.

By sect. 108 of the P.H.A., 1936 (*a*), the council of a borough, urban district, rural district or parish may provide a mortuary for the reception of dead bodies before interment and a post mortem room for the reception of dead bodies during the time required to conduct any post mortem examination ordered by a coroner or duly authorised authority, and the Minister may require any such council to provide a mortuary or post mortem room. Powers to equip and to staff mortuaries and post mortem rooms are provided by sect. 271, and bye-laws may be made with respect to the management and charges for the use of them. The last edition of the Model Bye-Laws of the M. of H. with an accompanying memorandum, was issued in 1935 (32—9999).

If it should be desired to provide a mortuary or a post mortem room for a parish not having a parish council, powers for those purposes can be conferred upon the parish meeting by the county council under sect. 273 of the L.G.A., 1933 (*b*).

The premises can be provided either within or outside the area of the authority but can be provided outside the area only if land is purchased, leased or exchanged for such purpose (*c*); power to

(*a*) 29 Halsbury's Statutes 458.  
(*c*) S. 137 ; *ibid.*, 391.

(*b*) 26 Halsbury's Statutes 451.

erect buildings outside the area is given by the P.H.A., 1936, sect. 274 (d).

Arrangements for the use of a mortuary or post mortem room provided by the council of another district or by any other person would amount to a provision within the meaning of the Act (e) and a council which provides buildings or other premises may enter into agreement for such use (f). The reference to a person would also presumably cover a contribution by a local authority to a voluntary hospital on condition that they may use the hospital's mortuary. [569]

If the M.O.H. or other registered medical practitioner on the staff of a local authority certifies that the retention of a dead body in any building would endanger the health of the inmates or the inmates of any adjoining or neighbouring building, a justice of the peace may order the body to be removed, at the cost of the local authority, to a mortuary (g).

If the M.O.H. or any registered medical practitioner certifies that, in order to prevent the spread of infection, it is desirable that the body of a person dying in hospital while suffering from a notifiable disease should not be removed except to a mortuary or for immediate burial or cremation, it is not lawful to remove the body except for such a purpose and any person offending against the provision is liable to a fine not exceeding £5 (h).

If a coroner directs or requests a post mortem examination of a body to be made he may order the removal of the body to a place provided for the purpose within or outside the area of his jurisdiction, but if that place is outside his area, then only with the consent of the person or authority by whom the place is provided (i).

Apart from the powers of local authorities to provide mortuaries, and post mortem rooms under the P.H.A., 1936, the provision of a mortuary and a post mortem room is often a desirable and necessary adjunct of a public assistance institution or of a hospital, mental hospital or mental deficiency institution. The Board of Control, for example, in their circular letter of February, 1930, as to arrangements for colonies for mental defectives say, "a small mortuary and post mortem room should be provided in a suitable and accessible position, but well screened from view. It should include a suitable small viewing room or lobby." Such premises should only be used for the reception and examination of persons dying in the institution, though a mortuary provided under the Poor Law Act, 1930, may properly be used for the reception of persons in receipt of relief whether they die in the institution or not.

An employee of a local authority who claimed compensation under the Workmen's Compensation Acts, alleging that he had contracted scarlet fever through working in a mortuary, was held not to be so entitled (k). [570]

(d) 29 Halsbury's Statutes 498.

(e) P.H.A., 1936, s. 271 (2); 29 Halsbury's Statutes 497.

(f) *Ibid.*, s. 271 (3).

(g) *Ibid.*, s. 162.

(h) *Ibid.*, s. 163.

(i) Coroners (Amendment) Act, 1926, s. 24; 3 Halsbury's Statutes 702.

(k) *Martin v. Manchester Corpn.* (1912), 106 L. T. 741; 34 Digest 272, 2305; see also *Eke v. Hart-Dyke*, [1910] 2 K. B. 677, C. A.; 34 Digest 271, 2304.

**London.**—The provisions relating to London are contained in the P.H. (London) Act, 1936, sect. 234—237 (*l*). These require the sanitary authorities (the Common Council of the City and metropolitan borough councils) to provide proper places for the reception of dead bodies, empower justices in certain cases to order the removal of dead bodies to a mortuary, empower sanitary authorities to provide post mortem examination rooms, and to combine, with the approval of the county council, for the purpose of providing mortuaries or post mortem examination rooms.

Power is given to the sanitary authorities to make bye-laws with respect to the management and charges for the use of mortuaries, and to provide for the decent and economical interment at charges to be fixed by such bye-laws, of any dead body received into a mortuary, and to make regulations with respect to the management of post mortem examination rooms.

Buildings for post mortem examinations may be provided in connection with mortuaries, but the Act does not authorise the conducting of any post mortem examination in a mortuary. Sect. 210 is similar to sect. 163 of the P.H.A., 1936, *supra*.

Sect. 239 empowers the L.C.C. to provide in London one or two suitable buildings to which dead bodies found in London and not identified may, on the order of a coroner, be removed. The county council is by sect. 238 required to provide accommodation for holding inquests. This may, by agreement between the county council and a sanitary authority, be provided and maintained by the county council in connection with a mortuary or a building for post mortem examinations provided by the sanitary authority, or by the sanitary authority itself in connection with a mortuary or other building belonging to that authority. [571]

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(1) 26 Geo. 5 & 1 Edw. 8, c. 50.

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## MOTOR CARS

*See ROAD TRAFFIC.*

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## MOTOR COACHES

*See PUBLIC SERVICE VEHICLES.*

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## MOTOR LICENCES

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*See also titles :*

LONDON ROADS AND TRAFFIC ;  
PUBLIC SERVICE VEHICLES ;

ROAD TRAFFIC ;  
TRAFFIC COMMISSIONERS.

**Introductory.**—The duties on licences for mechanically propelled vehicles are imposed by sect. 13 of the Finance Act, 1920 (*a*), which requires the levy of excise duties on mechanically propelled vehicles used on public roads in Great Britain. The rates of duty were set out in the Second Schedule to the Act of 1920, but the duties have been extensively amended by the Finance Acts of 1920, 1927, 1928, 1930, 1931 and 1933–1936 (*b*). The table of duties is based on a classification of vehicles according to construction and user; the general principles are : (1) cycles and tricycles are taxed on a combined basis of weight and cylinder capacity, (2) hackney carriages are taxed on seating capacity, (3) certain agricultural vehicles are taxed at a fixed rate of 5s., (4) other agricultural vehicles, showmen's vehicles, non-agricultural tractors, and goods vehicles are taxed on a basis of weight (unladen), with variations in certain cases according to nature of tyres, means of propulsion (*c*), user, and the attachment of trailers (*d*), (5) vehicles not otherwise charged (including the majority of private cars) are taxed at a fixed rate of £4 10s. 0d. if not exceeding 6 h.p. or electrically propelled (*e*) or at 15s. per unit of horse-power (*e*) if exceeding 6 h.p. Special rates are laid down for certain classes of vehicle, e.g. tramcars used for carrying passengers on rails, and by sect. 13 (*f*) of the Finance Act, 1920, exemption from duty is granted in respect of vehicles kept by a local authority for the purpose of fire brigade service, ambulances or road rollers. This exemption is extended by sect. 25 of the Act of 1933 to vehicles used by a local authority or their contractor for cleansing or watering roads or cleansing gullies; "road construction

(*a*) 16 Halsbury's Statutes 852.

(*b*) *Ibid.*, 960, 977, 998; 23 Halsbury's Statutes 506; 24 Halsbury's Statutes 383; 26 Halsbury's Statutes 600; 28 Halsbury's Statutes 808; and 29 Halsbury's Statutes 762. The Schedule as amended is long and complicated, and is not set out here. From time to time the M. of T. has issued consolidated tables of rates, and information is also given on the appropriate declaration forms.

(*c*) As to what are electrically propelled vehicles, see s. 6 (1) of the Finance Act, 1930; 23 Halsbury's Statutes 508. The electrical motive power must be derived either from a source external to the vehicle or from a storage battery not connected to any source of power when the vehicle is in motion.

(*d*) As to the circumstances in which a farming implement drawn by a goods vehicle is not deemed to be a trailer, see Finance Act, 1936, s. 11 (20 Halsbury's Statutes 760).

(*e*) The method of calculating the unit of b.p. is prescribed by the M. of T. under s. 13 (3) of the Finance Act, 1920.

vehicles" are exempted from duty by sect. 10 of the Finance Act, 1936, which includes a definition of such vehicles; and sect. 9 of the same Act exempts invalid carriages from duty. Vehicles used exclusively on private roads are also exempt (Act of 1924, sect. 18 (3)), together with those used exclusively for the haulage of lifeboats and necessary gear (Act of 1927, sect. 11 (2)). Vehicles used on roads for subsidiary purposes only may be exempted by the licensing authority by virtue of, and subject to, the conditions contained in sect. 12 of the Finance Act, 1936. [572]

The classification, rating and measurement of vehicles for taxation applies for that purpose only; e.g. the issue of an excise licence for a hackney vehicle with a given number of seats would not permit the carriage of a greater number of passengers than is permitted by regulations made under sect. 94 of the Road Traffic Act, 1930 (f).

Sect. 13 (5) of the Finance Act, 1920, empowers the M. of T. to make regulations totally or partially exempting from duty for a limited period any vehicle brought into the United Kingdom by a person making only a temporary stay therein. For the exercise of this power, see Road Vehicles (International Circulation Permit) Regulations, 1933 (g). As to the Irish Free State, see Irish Free State (Consequential Adaptation of Enactments) Order, 1923, Art. 2 (h).

By sect. 22 of the Finance Act, 1921 (i), the M. of T. may prescribe rates of duty in respect of licences taken out for part of a year. [573]

The machinery for levying duties on mechanically propelled vehicles is contained in the Roads Act, 1920 (j), and the regulations made thereunder. Sect. 1 of the Roads Act, 1920, provides that these duties shall be levied by county councils (k) in accordance with provisions to be made for the purpose by Order in Council (l). County councils and their officers are given the same powers, duties and liabilities as the Commissioners of Customs and Excise and their officers. Subject to the provisions of the Roads Act, 1920, and of any Order in Council made under it, county councils have the powers given to the Treasury for the restoration of any forfeiture and the mitigation or remission of any penalty by the statutes relating to excise licences. The Order in Council made under sect. 1 of the Roads Act, 1920, substantially reproduces the provisions of the Order in Council of October 19, 1908, relating to Local Taxation Licences, so far as relates to the authorisation of officers, the recovery of penalties and their remission and mitigation. See the title LOCAL TAXATION LICENCES.

The object of the system of licensing established by the statutes already mentioned was the provision of money for the Road Fund which was established by sect. 3 of the Roads Act, 1920. This fund was subject to the control and management of the M. of T. and was available for the construction and improvement of roads (m) under Part II. of the Development and Road Improvement Funds Act, 1909 (n), as amended

(f) 23 Halsbury's Statutes 673. Cf. *Dennis v. Miles*, [1924] 2 K. B. 399; 42 Digest 858, 115. But the M. of T. has expressed the opinion that, for excise purposes only, two young children may be counted as one adult, and *semble* the conveyance of additional passengers standing does not create an excise offence.

(g) S.R. & O., 1933, No. 318.

(h) S.R. & O., 1923, No. 405.

(i) 10 Halsbury's Statutes 876.

(j) 10 Halsbury's Statutes 85-100.

(k) Includes county borough councils, see s. 17 of Roads Act, 1920.

(l) See Road Vehicles (Registration and Licensing) Order, 1921; S.R. & O., 1921, No. 221.

(m) From time to time since the establishment of the Road Fund portions of the fund have been diverted to other purposes by the annual Finance Acts.

(n) 9 Halsbury's Statutes 212.



by the Act of 1920, but there were certain prior charges which are dealt with under the heading "Proceeds of Duties," *infra*. The present position of the Road Fund is indicated under the same heading.

If a motor vehicle constructed or adapted for use for the carriage of goods, or a trailer so constructed or adapted, is used on a road for the carriage of goods for hire or reward, or for or in connection with any trade or business, an additional licence must be obtained from the Traffic Commissioners under sect. 1 of the Road and Rail Traffic Act, 1933 (o), unless the vehicle is exempt under sect. 1 (7) of that Act. [574]

**Registration of Vehicles.**—The registration of a mechanically propelled vehicle is effected in conjunction with the issue of an excise licence. By sect. 6 of the Roads Act, 1920 (p), provision is made for the allotment to a vehicle by the council of a separate number on the first issue of an excise licence in respect of the vehicle. The code letters which form part of the identification mark of the vehicle are allotted to the several local authorities by the M. of T. and a registration book is issued to the owner of the vehicle. As to the procedure on registration and the custody, production and use of registration books, see the Roads Vehicles (Registration and Licensing) Regulations, 1924 (q), as amended by regulations of 1930, 1933 and 1935. As to forgery, fraudulent use, etc., of registration books, see sect. 13 (4) of the Roads Act, 1920, *infra*. [575]

**Levy of Duties and Enforcement.**—Substantially the machinery for the levy and enforcement of duties under the before-mentioned Acts is similar to that described in the title LOCAL TAXATION LICENCES, and normally the functions of councils in these two matters are exercised through the same staff. The excise licensing system for mechanically propelled vehicles is, however, highly complicated owing to the number of regulations (covering points of minute detail) made by the M. of T. under sect. 12 of the Roads Act, 1920 (r), to which reference should be made as necessary. Owing to limitations of space it is impossible to do more than indicate the more important regulations in this title. Any person who contravenes or fails to comply with any regulation made under the Roads Act, 1920, is liable on summary conviction to a penalty not exceeding £20 (s).

Sect. 5 of the Roads Act, 1920, provides for the making of declarations by applicants for excise licences either under sect. 13 of the Finance Act, 1920, or under sect. 4 of the Customs and Inland Revenue Act, 1888 (t) (carriage licences). Forms are prescribed by the Regulations of 1924 (u). A licence under the Finance Act, 1920, is issued in respect of a particular vehicle, except general and limited trade licences (a), and does not authorise the use of any vehicle other than

(o) 26 Halsbury's Statutes 872.

(p) 19 Halsbury's Statutes 90.

(q) S.R. & O., 1924, No. 1462.

(r) 19 Halsbury's Statutes 95.

(s) Act of 1920, s. 12 (4). This is not an excise penalty and cannot be compromised or mitigated by a council; an employer may be liable for a contravention of regulations committed by an employee within the scope of his employment, but contrary to instructions (*Griffiths v. Studebakers, Ltd.*, [1924] 1 K. B. 102; 39 Digest 239, 144).

(t) 16 Halsbury's Statutes 577.

(u) S.R. & O., 1924, No. 1462.

(a) Roads Act, 1920, s. 9, as amended by Finance Act, 1922, s. 15 (1); 16 Halsbury's Statutes 907. Part II. of the Regulations of 1924 (see *supra*, note (u)), authorised the issue of general and limited trade licences to manufacturers of, dealers in, and repairers of mechanically propelled vehicles; subject to the statutory conditions these licences and the relative identification marks are transferable from vehicle to vehicle.

that in respect of which it is issued. A county council are not required to issue any licence for which application is made, unless they are satisfied that the licence applied for is the appropriate licence for the vehicle specified in the application, and where the application purports to be a first application (*i.e.* involving the registration of a vehicle) the council may also satisfy themselves that no previous licence has been issued in respect of that vehicle (Roads Act, 1920, sect. 5 (2)). [576]

Declarations made under sect. 5 (1) are declarations for the purpose of sects. 20, 21, of the Revenue Act, 1869 (*b*), as modified by the regulations, and sects. 22, 23 of that Act are applied to declarations in respect of carriage licences (*c*). The first application for a licence in respect of a mechanically propelled vehicle must be made to the appropriate council as defined in the regulations of 1924 (Part I.), but a renewal of an excise licence, where there has been no change of ownership of the vehicle during the then expiring or last expired licensing period, may be effected at any post office authorised for the purpose by the Postmaster-General, within fourteen days before or after the expiry of the current licence (*d*). In any case the appropriate declaration form must be completed and the applicant must produce the registration book relating to the vehicle, and a current certificate of insurance or certificate of security, in compliance with sect. 39 of the Road Traffic Act, 1930 (*e*).

The penalty for using (*f*) a mechanically propelled vehicle for which an excise licence is not in force, or for using at any one time a greater number of vehicles than is authorised by a current licence or licences is an excise penalty of £20 or three times the amount of the duty payable, whichever is the greater (Roads Act, 1920, sect. 13 (1)). As to recovery, etc., of excise penalties, see title LOCAL TAXATION LICENCES. By sect. 13 (2) of the Roads Act, 1920, any person who in connection with an application for a licence for a vehicle or carriage knowingly makes a declaration which is false, or misleading in a material respect, or who, being required by virtue of the Act to forward particulars in connection with a change of registration, knowingly furnishes false or materially misleading particulars, is liable on summary conviction to a penalty not exceeding £50 or to imprisonment with, or without, hard labour not exceeding six months. By sect. 13 (4) of the Roads Act, 1920, the like penalties are provided for forgery or fraudulent alteration, use (or allowing to be used), or lending of any identification mark, licence, or registration book (*g*). [577]

In any proceedings under sect. 13 the burden of proof as to the following matters is imposed by sub-sect. (3) on the defendant: (1) number of vehicles used; (2) character, seating capacity, weight or horse-

(b) 16 Halsbury's Statutes 249.

(c) See sect. 5 (6) of the Roads Act, 1920.

(d) Regulations of 1924, No. 18, as substituted by Road Vehicles (Registration and Licensing) Amendment (No. 2) Regulations, 1930. Licences are not issued at a post office in respect of vehicles intended solely for letting on hire to be driven by the hirer or by a person under his control.

(e) 23 Halsbury's Statutes 640.

(f) As to aiding and abetting by the owner of a vehicle where the actual driver is not the owner, cf. *Du Cros v. Lambourne*, [1907] 1 K. B. 40; 14 Digest 91, 610, and *Gough v. Rees* (1929), 94 J. P. 53; Digest (Supp.), but where the owner has no effective control of the user of the vehicle he is not liable to a penalty, see *Abercromby v. Morris* (1932), 96 J. P. 392; Digest (Supp.).

(g) Offences under s. 13 (2) and (4) are not excise offences and cannot be mitigated or compromised by a council; a defendant must be informed of his right to trial by a jury (Summary Jurisdiction Act, 1879, s. 17; 11 Halsbury's Statutes 329).

power of any vehicle; and (3) the purpose for which any vehicle has been used. Where it is alleged that a vehicle has been used in contravention of sect. 13, the owner of the vehicle may be required by or on behalf of a chief officer of police or a county council to give information as to the identity of the driver or user of the vehicle, and, if he fails to do so, shall be guilty of an offence unless he proves that he did not know and could not with reasonable diligence have ascertained who was the driver or user; failure by any other person on a similar requirement to give any information in his power which may lead to the identification of the driver or user, is an offence. The penalty, on summary conviction, is a fine not exceeding twenty pounds (Finance Act, 1936, sect. 13).

Penalties recovered under or in pursuance of the Roads Act, 1920, are payable to the Exchequer in accordance with directions contained in the Order in Council (*h*) (sect. 13 (5)).

Alteration of a vehicle after the issue of a licence which has the effect of bringing the vehicle into a class in respect of which a higher rate of duty is appropriate, avoids the licence, but on making a new declaration and surrendering the original licence, the owner is entitled to a licence at the higher rate for the unexpired period on paying the difference between the lower and higher rates of duty. But by sect. 14 of the Finance Act, 1932 (*i*), the higher rate of duty does not become payable unless all the conditions requisite to bring the vehicle into the higher class are fulfilled. This enactment overrules the decision in *Payne v. Allcock* (*j*) where user for the carriage of goods of a vehicle constructed as a private passenger car, was held to attract duty at a higher rate, although the vehicle was not constructed or adapted for the carriage of goods. A vehicle licensed as a goods vehicle is not to be deemed to be used otherwise than solely for the conveyance of goods in the course of trade by reason only that it is used for the conveyance of the employees of the person keeping the vehicle in the course of their employment (Roads Act, 1920, sect. 8 (2)). If the vehicle (being licensed as a goods vehicle) is to a substantial extent being used for the conveyance of goods or burden belonging to a particular person (whether he is the person keeping the vehicle or not) duty at a higher rate does not become chargeable by reason only that it is used for the conveyance, without charge, in the course of their employment, of employees of the owner of the goods or burden (*k*). This provision enables employees of hirers of goods vehicles to travel with their employers' loads. [578]

Sect. 8 (3) of the Roads Act, 1920, provides for an excise penalty in respect of the user of a vehicle for a purpose which attracts a higher rate of duty than that at which the vehicle is licensed but this penalty can be imposed only on the holder of the licence (*l*); and in practice sect. 8 (3) is largely superseded by sect. 14 of the Finance Act, 1922 (*m*), which provides that where a licensed vehicle is used during the currency of the licence in an altered condition or in a manner or for a purpose which attracts a higher rate of duty, the higher rate shall become chargeable in respect of the licence for that vehicle. By sub-sect. (2) if duty at the higher rate was not paid before the vehicle was so used, the person so using the vehicle is liable to a penalty equal to three times the difference between the duty actually paid and the duty payable, or £20, whichever is the greater (*n*).

(*h*) *Vide* Order in Council of February 7, 1921.

(*i*) 25 Halsbury's Statutes 587.

(*j*) [1932] 2 K. B. 413; Digest Supp.

(*k*) Finance Act, 1931, s. 2; 24 Halsbury's Statutes 333.

(*l*) *Morris v. Tolman*, [1928] 1 K. B. 166; 14 Digest 92, 612.

(*m*) 16 Halsbury's Statutes 908.

(*n*) This section enables a council to recover a penalty from the user whether or

Cases of under-payment of duty can also be dealt with under sect. 14 of the Finance Act, 1926 (o), which provides that the difference between the duty paid and the duty payable in respect of a vehicle shall be a debt due to the council with which the vehicle is for the time being registered, and allows the council to sue for its recovery at any time before the expiration of the year next following the year in respect of which, or of part of which, the licence was taken out. This remedy is particularly appropriate to cases in which a genuine mistake has been made, e.g. where a vehicle on re-weighing is found to exceed the weight originally declared. [579]

Mechanically propelled vehicles which are chargeable with duty as hackney carriages are required by sect. 11 of the Roads Act, 1920 (p), to carry a distinctive sign indicating that the vehicle is a hackney carriage and the number of persons which the vehicle seats. By sub-sect. (2) a keeper of a hackney carriage is liable to an excise penalty equal to three times the difference between the duty paid and the duty chargeable, if the vehicle is used for the purpose of seating more persons than the number indicated in the licence. By sub-sect. (3) provision is made for a rebate of duty on the licensing of a new hackney vehicle in substitution for a similar vehicle withdrawn from a fleet of twelve or more such vehicles in one ownership. The Second Schedule to the Finance Act, 1920, incorporates the definition of "hackney carriages" in sect. 4 (3) of the Customs and Inland Revenue Act, 1888 (q). Trams are classified for taxation purposes as hackney carriages, if used for the conveyance of passengers (Finance Act, 1920, Sched. II., para. 8, as amended by sect. 8 (1) of the Roads Act, 1920 (r)), but are not required to carry hackney carriage plates (Regulations of 1924, para. 31) (s). [580]

Local licensing fees in respect of vehicles, other than trams, were abolished by sect. 14 of the Roads Act, 1920. As to the licensing and control of public service vehicles, see the Road Traffic Acts, 1930 to 1934 (t), and regulations issued thereunder.

Sect. 17 of the Finance Act, 1934 (u), empowered (*inter alia*) local authorities to grant excise licences for vehicles upon receipt of a cheque for the amount of the duty; if the cheque is subsequently dishonoured, the licence is void as from the time when it was granted and the local authority must send by registered post to the person to whom the licence was issued, a notice requiring him to deliver up the licence to them within seven days of the posting of the notice. The notice must be sent to the address given by the applicant when applying for the licence; and an excise penalty of £50 is incurred by a failure to comply with the notice. Use of a vehicle under such a licence renders

not he be the holder of the licence; *semble*, the penalty is not an excise penalty and cannot be compromised or mitigated by the council as can the penalty under s. 8 (3) of the Roads Act, 1920. A penalty under the Finance Act, 1922, s. 14, is payable into the Exchequer under s. 13 (5) of the Roads Act, 1920.

(c) 10 Halsbury's Statutes 966.

(d) 10 Halsbury's Statutes 94.

(e) 10 Halsbury's Statutes 577. See Part I. of Sched. VII. to Finance Act, 1933; 26 Halsbury's Statutes 688.

(f) 10 Halsbury's Statutes 861; 19 Halsbury's Statutes 93.

(g) In *A.-G. v. Yorkshire (Woolen District) Electric Tramways, Ltd.*, [1907] 2 K. B. 901; 43 Digest 359, 132, it was held that a car used on a light railway constructed on a public road under the Light Railways Act, 1896, was not taxable as a carriage.

(h) 28 Halsbury's Statutes 607; 24 Halsbury's Statutes 450; 27 Halsbury's Statutes 534.

(i) 27 Halsbury's Statutes 492.

the user liable to an excise penalty under sect. 13 (1) of the Roads Act, 1920, and, *semble*, a liability is incurred by a user other than the person who gave the dishonoured cheque. It appears that the provisions of sect. 17 are mandatory and that a local authority cannot treat the licence as being in force on suing on the dishonoured cheque.

The surrender of current licences for mechanically propelled vehicles and the repayment of a proportion of the excise duty are governed by sect. 18 of the Finance Act, 1924 (a); the holder of a licence with an unexpired period of more than one month is entitled, on surrender, to a proportionate refund (as set out in sect. 18 (1)) in respect of each month of the unexpired period. The fees payable to the local authority on surrender were abolished by sect. 18 (3) of the Finance Act, 1934 (b). No proceedings may be taken to enforce repayment of duty unless commenced before the expiration of the year next following the year in respect of which, or part of which, the licence was taken out (c). [581]

**Proceeds of Duties.**—Under sects. 1 (4), 13 (5) of the Roads Act, 1920 (d), the duties levied by councils and penalties and forfeitures are paid into the Exchequer. Art. 4 of the Road Vehicles (Registration and Licensing) Order, 1921, requires councils to pay the foregoing monies to the credit of an account, called the "Motor Tax Account," opened in the name of the M. of T. at the Bank with whom the council bank. All sums standing to the credit of the Motor Tax Account are remitted from time to time, on the instructions of the M. of T., to the Motor Tax Account opened in the name of the Minister at the Bank of England. Under Art. 4 (3) and (4), post office receipts, and receipts by justices' clerks (on remittance through the H.O.) also pass to the Motor Tax Account at the Bank of England. Subject to payment out of the Motor Tax Account on the certificate of the Minister of sums required for repayment of duty, the credit balance of the Motor Tax Account is transferred to the Exchequer Account.

Sect. 2 of the Roads Act, 1920, provided for the issue from the Consolidated Fund to the Road Fund (established by sect. 8) of a sum equal to the duties levied under sect. 1 and of all other sums paid into the Exchequer under the Roads Act, 1920. As originally enacted, sect. 2 required payment into the Local Taxation Account of a sum for distribution to councils in replacement of the duties on carriage licences collected prior to the commencement of the Act of 1920, but this adjustment ceased on the winding-up of the Local Taxation Account under the L.G.A., 1929. Sect. 2 of the Roads Act, 1920, was repealed by the Finance Act, 1936, and under sect. 33 of that Act the Road Fund is maintained by moneys provided by Parliament of such amount as the M. of T., with the consent of the Treasury, determines to be required for the statutory purposes of the Fund; as from the commencement of sect. 33 the direct connection between the proceeds of motor licence duties and the Road Fund ceased. [582]

The Road Fund is the successor to the road improvement grant fund established under the Development and Road Improvement Funds Act, 1909 (e), and by sect. 3 (4) of the Roads Act, 1920, as extended, was charged with the following prior payments:

- (1) the expenses properly incurred by councils in accordance with the directions of the M. of T. in levying the duties, registering vehicles and issuing drivers' licences;
- (2) compensation to local or police authorities for loss of fees for the licensing of mechanically propelled hackney vehicles, which

(a) 16 Halsbury's Statutes 923.

(b) 27 Halsbury's Statutes 403.

(c) Finance Act, 1926, s. 14 (2); 16 Halsbury's Statutes 906.

(d) 19 Halsbury's Statutes 86, 98.

(e) 9 Halsbury's Statutes 207.

- are not public service vehicles, see sect. 89 of the Road Traffic Act, 1930 (*f*);
- (3) expenses of the Roads Department of the M. of T. in the administration of the Act of 1920, the London Traffic Act, 1924, the Road Traffic Acts, 1930 and 1934, the Road and Rail Traffic Act, 1938, and the Restriction of Ribbon Development Act, 1935;
- (4) M. of T. contributions in respect of salaries and establishment charges of engineers or surveyors to the local authorities under sect. 17 (2) of the M. of T. Act, 1919 (*g*); and
- (5) expenses of other Government departments in connection with the collection of the duties or in the administration of the Act.

Under sect. 33 and Sched. III. of the Finance Act, 1936, the foregoing and certain other payments set out in the Schedule are now made out of moneys provided by Parliament; reference should be made to Part II. of Sched. III., *ibid.*, for repeals consequential to the alteration of the statutory position of the Road Fund. [583]

**Drivers' Licences (*h*).**—Sect. 4 (1) of the Road Traffic Act, 1930 (*i*), forbids a person to drive a motor vehicle (*j*) on a road unless he is the holder of a licence, nor shall an unlicensed person be employed to drive. The licensing authority is the council of the county or county borough (*h*) in which the applicant for the licence resides, or, in the case of an applicant not ordinarily resident in the United Kingdom, a registration authority authorised by the M. of T. It is the duty of the licensing authority under sect. 4 (2) of the Act to issue a licence to any person who applies for it on the payment of a fee of 5s. accompanied by a declaration of the applicant in the prescribed form that he is not disqualified by reason of age or otherwise for obtaining the licence for which he is applying. An applicant must also declare under sect. 5 of the Act that he is not suffering from disease or physical disability (see *post*). By sect. 6 of the Road Traffic Act, 1934 (*l*), the applicant must also satisfy the licensing authority that he has at some time passed the prescribed test of competence to drive, or that at some time before April 1, 1934, he has held a licence under the Acts of 1930 or 1903 authorising him to drive vehicles of the class or description which he would be authorised by the licence applied for to drive. [584]

The Acts of 1930 and 1934 confer on the M. of T. wide powers of making regulations; for the exercise of these powers, see the Motor Vehicles (Driving Licences) Regulations, 1935 (*m*).

Fees received by a licensing authority for driving licences are paid into the Exchequer in the same manner as duties levied under the

(*f*) 23 Halsbury's Statutes 670.

(*g*) 3 Halsbury's Statutes 435.

(*h*) The provisions of the Road Traffic Acts, 1930 and 1934, and the regulations made thereunder as to drivers' licences replace the corresponding provisions of the Motor Car Act, 1903 (now repealed). Provision was made by s. 122 of the Act of 1930 for carrying forward endorsements from licences issued under the Act of 1903.

(*i*) 23 Halsbury's Statutes 611.

(*j*) *I.e.*, a mechanically propelled vehicle intended or adapted for use on roads. Drivers of trams the use of which is authorised or regulated by statute or statutory order do not require drivers' licences, but drivers of trolley vehicles must take out licences (Road Traffic Act, 1930, s. 1).

(*k*) The Road Traffic Act, 1934, s. 31 (27 Halsbury's Statutes 557), constitutes the several chairmen of traffic commissioners as licensing authorities for the purpose of issuing licences to drive heavy goods vehicles; as to the issue of a provisional licence to enable a person to learn to drive a heavy goods vehicle, see Road Traffic (Driving Licences) Act, 1936, s. 2; 29 Halsbury's Statutes 814. As to limitation of a licence to a class or classes of vehicles in respect of which an applicant has been tested, see *ibid.*, s. 3 (2), giving power to make regulations.

(*l*) 27 Halsbury's Statutes 540.

(*m*) S.R. & O., 1935, No. 437.

Roads Act, 1920 (Act of 1930, sect. 117); as to the ultimate disposal of these fees, see sect. 33 (1) (d) of the Finance Act, 1936.

Disqualification by age arises under sect. 9 of the Act of 1930, the effect of which is that a person under sixteen years of age (*n*) cannot drive a motor vehicle on a road; under seventeen years of age he is restricted to a motor cycle or an invalid carriage; under twenty-one years of age (*n*) he cannot drive a heavy locomotive, light locomotive, motor tractor, or heavy motor car (*o*) on a road. Disqualification otherwise than by age normally arises on a conviction under the Act of 1930 or 1934 for an offence in respect of which conviction must, or may, involve disqualification. [585]

Sect. 5 of the Act of 1930 requires the inclusion, in the declaration on an application for a driver's licence, of a statement as to prescribed diseases or physical disability; or as to any other disease or physical disability which would be likely to cause the driving, by the applicant, of a motor vehicle to be a source of danger to the public. A licence must be refused if the declaration discloses such a disease or disability, unless the licence is to drive an invalid carriage, or unless the applicant undergoes a test (sect. 5 (2)). A provisional licence may be granted for the purpose of enabling the applicant to learn to drive and pass a test (sect. 5 (3)). The licensing authority may revoke a driver's licence if it appears to them that the driver suffers from disease or physical disability likely to cause the driving by him of a motor vehicle to be dangerous to the public (sect. 5 (4)). The licensing authority must be satisfied of the facts after inquiry, and before revoking the licence must give notice to the licence-holder of their intention to do so. There is no express provision giving the licence-holder the right to be heard, but this right seems to be implied (*p*), and unless the disease or disability is one of those prescribed, he can claim a test. He has a right of appeal to a petty sessional court against either a refusal or a revocation of the licence (sect. 5 (5)). For the prescribed diseases and disabilities, see the Motor Vehicles (Driving Licences) Regulations, 1935. [586]

For driving tests, and the issue of provisional licences to enable persons to drive a motor vehicle, see sect. 6 of the Road Traffic Act, 1934 (*q*), sect. 3 (1) of the Road Traffic (Driving Licences) Act, 1936 (*r*), and the regulations of 1935 and 1937. Where a person passes a test under sect. 6 of the Act of 1934, with respect only to the driving of any specified class or description of vehicles, his driving licence shall specify that class or description of vehicles, and he shall be deemed not to hold a licence to drive vehicles of any other class or description (Road Traffic (Driving Licences) Act, 1936, sect. 3 (1)). A person may be ordered by the court, on conviction of an offence under sect. 11, 12 of the Act of 1930, to pass a driving test, as a qualification for restoration of his driving licence, whether or not he has previously passed a test (*s*).

Knowingly making a false statement for the purpose of obtaining a driver's licence is punishable with a fine of not exceeding £50 and/or imprisonment for not more than six months (*t*). A police constable is

(*n*) S. 9 contains exceptions in favour of persons driving before January 1, 1930; these exceptions are largely spent.

(*o*) For the classification of motor vehicles for this purpose, see Road Traffic Act, 1930, s. 2. For an exception in favour of an agricultural tractor driven on a road in the course of the internal operations of a farm, see *ibid.*, s. 9 (3).

(*p*) See *Richardson v. Methley School Board*, [1893] 3 Ch. 510; 33 Digest 11, 24.

(*q*) 27 Halsbury's Statutes 540.

(*r*) 29 Halsbury's Statutes 814.

(*s*) Road Traffic Act, 1934, s. 6 (3); *ibid.*, 541.

(*t*) Act of 1930, s. 112 (2); 23 Halsbury's Statutes 683, as amended by the Act of 1934, Sched. III.; 27 Halsbury's Statutes 568.

empowered to seize a licence in relation to which he has reasonable cause to believe that a false statement has been made knowingly (*u*). In any proceedings the fact that a licensee has been granted to a person is evidence that that person for the purpose of obtaining that licence made a declaration that he was not disqualified for holding or obtaining the licence (*ibid.*, sect. 4 (7)).

By sect. 4 (6) of the Road Traffic Act, 1930 (*a*), the holding of another licence which is in force, whether suspended or not, disqualifies for obtaining a licence, but under No. 4 of the Regulations of 1935, an application for the grant of a licence may be received and dealt with at any time within two months before the date on which the grant of the licence is to take effect. [587]

**London.**—Under the Motor Vehicles (International Circulation) Regulations, 1933 (S.R. & O., 1933, No. 318), the L.C.C. is a registration authority in common with the Royal Automobile Club, the Automobile Association, and the Royal Scottish Automobile Club; but in each case the L.C.C. must be advised by the other authorities of the issue of permits and driving licences. The position in London for other purposes is the same as elsewhere. [588]

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(*u*) Act of 1930, s. 112 (4); 23 Halsbury's Statutes 683.

(*a*) *Ibid.*, 612.

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## MOVABLE DWELLINGS

*See* TENTS, SHEDS AND VANS.

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## MULES

*See* HORSES, PONIES, MULES OR ASSES.



## MUNICIPAL BANKS

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**Introduction.**—The term “municipal bank” is generally used as a convenient abbreviation for “municipal *savings* bank.” Although in certain quarters it has been suggested that local authorities should be empowered to establish municipal banks which would grant credit facilities and otherwise compete with the joint stock banks, such a suggestion is foreign to the original conception of the municipal bank ; moreover, an institution of that character would scarcely be within the scope of *local* government.

The idea of the municipal bank appears to have originated with the Birmingham Corporation, who in 1915 sought to promote a scheme designed to stimulate local savings through such an agency for the purpose of war finance. The Birmingham scheme, considerably revised, became the model for a general enabling Bill which was introduced into Parliament, and was subsequently enacted as the Municipal Savings Banks (War Loan Investment) Act, 1916 (*a*). This Act authorised the establishment of municipal savings banks, guaranteed by the rates, subject to the following conditions :

- (1) It should apply only to municipal boroughs with a population of not less than 250,000.
- (2) Deposits should only be received from employees through their employers.
- (3) No depositor should be allowed to deposit more than £200 in all.
- (4) The bank should cease to operate *three months after the end of the war*.
- (5) All investments should be through the National Debt Commissioners in Treasury Bills or advances to the Treasury.
- (6) The rate of interest paid by the National Debt Commissioners to the bank should be determined, and the rate paid by the bank to the depositors approved, by the Treasury.
- (7) The accounts and funds of the bank should be kept separate from all other accounts and funds of the council.
- (8) Withdrawals exceeding £1 should be at 7 days' notice.
- (9) The bank should be carried on in accordance with regulations made by the Treasury, after consultation with the Local Government Board.

Of the eighteen corporations to which the Act applied (*i.e.* having populations exceeding 250,000), the Birmingham Corporation alone

took advantage of the Act and established a bank, the deposits in which at March 31, 1919, amounted to £323,123.

The question of establishing State or municipal *housing* banks to supplement the existing facilities for making advances to persons building or purchasing houses was considered in 1918-1919 by a Departmental Committee appointed by the Minister of Reconstruction. This Committee recommended that the Act of 1916 should be continued and amended to empower the establishment of municipal organisations of the nature of housing banks. No action was, however, taken on the committee's recommendations. [589]

**The Birmingham Bank.**—The success of the temporary bank led the Corporation to seek permanent powers for its continuance, and these were obtained in the Birmingham Corporation Act, 1919 (*b*), which authorised the establishment of a municipal bank on ordinary savings bank lines, free from most of the special restrictions of the Act of 1916 (*c*). The Act provides that the bank shall be a savings bank, carried on in accordance with such regulations as the Treasury, or the Corporation with the approval of the Treasury, may prescribe; and that separate accounts shall be kept. It also empowers the Corporation to establish a housing department of the bank and to advance funds to depositors for the acquisition of dwelling-houses within the city. Under the regulations, the bank's investments are limited to (1) advances for the purchase of houses and allotment lands; (2) deposits with the Corporation at call; (3) securities approved by the Treasury (Government securities maturing within twenty years). The rate of interest payable to depositors is subject to the approval of the Treasury, and may not be varied except on three months' notice (*d*). Not more than £500 may be deposited by one depositor in any one year (with certain exceptions) but there is no limit to total deposits. Depositors are not, as in the post office and trustee banks, prohibited from opening more than one account, nor need they be resident in the City of Birmingham. The bank has power to refuse deposits. Withdrawals may be made on demand up to £30 in any one week, one week's notice being required for larger withdrawals. Housing advances (on mortgage) are to be made only to depositors and not for more than 90 per cent. of the valuation, or for a longer period than twenty years, except in special cases. [590]

The progress and results achieved by the Birmingham Municipal Bank have been remarkable (*e*). The original temporary bank made a loss, and so did the present bank during its first seven months, but each year since there has been a profit. The profit was devoted in the first place to paying off the loss on the temporary bank. Subsequent annual profits, and a special profit on realisation of investments, have

(b) 9 & 10 Geo. 5, c. lxxv.

(c) The temporary bank was wound up in November, 1919, and carried on under its new title "The Birmingham Municipal Bank," which met all claims on the old bank.

(d) The rate of interest was fixed first at  $8\frac{1}{2}$  per cent., and maintained at this rate until December 1, 1932, when it was reduced to 3 per cent.

(e) At March 31, 1936, deposits amounted to £21,230,935 in 410,871 accounts, and the reserve fund to £345,592. Assets included cash (in hand and with joint stock banks) £1,090,685; money on deposit with the Corporation £18,473,645 (of which the Corporation had invested £10,396,000 in British Government and other Trustee Securities); advances for house purchase, etc., £1,735,078, and premises and equipment £152,930.

There were open, in addition to the Head Office, 59 branches.

been placed to reserve, being in effect employed largely in acquiring and building premises. In its relations with depositors the bank has succeeded in its twofold object of encouraging the habit of thrift and of giving facilities for acquiring ownership of houses. Propaganda and publicity have contributed to this dual success; as has been said, the bank is "worked on the principle that it has to come to the people and not wait for the people to come to it." The bank takes deposits from one penny upwards, and also issues a large number of home safes. It co-operates with, and acts as banker to, the school savings bank which works under the Education Committee of the Council. In all these ways it provides for the very smallest savings.

It must be added, however, that the City of Birmingham is an exceptional area in that there is no Trustee Savings Bank there.

As an incident rather than as an object of the scheme, large sums of money have been available to the Corporation for use in financing its general requirements, and the bank has undoubtedly at times provided the Corporation with a source of cheap borrowing (*f*). The bank's investment policy is to lend all available money, apart from an amount equal to 5 per cent. of the total deposits which is held in cash or at joint stock banks, to the Corporation, on condition that the Corporation hold 50 per cent. of the amount in Government securities.

The bank and its branches are also used as a collecting agency for accounts due to the Corporation, both from depositors and others (*g*).

The bank is managed by a committee of the City Council, with a general manager appointed by them; the town clerk acts as solicitor, and the city treasurer as treasurer to the bank. [501]

**The Treasury Committee.**—Following the success of the Birmingham bank came efforts to obtain similar powers for other local authorities. Between 1923 and 1927, various Bills were introduced into Parliament to enable local authorities generally, or certain corporations, to establish banks on the Birmingham model, but they made no progress (*h*). In September, 1926, a Treasury committee was appointed "to consider whether it is desirable to permit a further extension of Municipal Savings Banks and, if so, within what limits and subject to what conditions, statutory or otherwise" (*i*). This committee heard evidence

(*f*) The rate of interest payable by the Corporation to the bank on funds placed on deposit with the Corporation at call is entirely within the Corporation's discretion; it was for many years somewhat lower than the rate at which the Corporation could borrow from outside sources, and somewhat higher than the rate of interest payable to depositors by the bank. It is apparent, however, that the general change in interest rates which took place in 1932 must have disturbed this relationship; for while the rate of interest payable to depositors was reduced as from December 1, 1932, from  $3\frac{1}{2}$  per cent. to 3 per cent., the rate at which the Corporation could borrow at call from outside sources during the post-1932 period of cheaper money cannot have exceeded 3 per cent.

(*g*) For a descriptive record of the bank's progress, see "Britain's First Municipal Savings Bank," by J. P. Hilton (Blackfriars Press, Ltd.).

(*h*) In opposition to the Bristol Corporation's proposals in 1926 it was stated on behalf of the Treasury that there were "very obvious dangers in borrowing short and lending long," which were "much more considerable when the risk is concentrated in one place." The Treasury considered that the provisions in the Bill for regulations to be made by the Treasury could not "meet the fundamental danger of small credit institutions nominally supported by public authorities and confined to comparatively small areas."

(*i*) The committee consisted of the Right Hon. Lord Bradbury, G.C.B. (chairman), Sir Laurence Halsey, K.B.E., Sir Harry Haward, Col. the Hon. Sidney Peel, D.S.O., and Sir William Schooling, K.B.E.

which, as they said, represented four broadly distinct interests—national finance, the municipalities, the existing savings organisations, and general banking, and in 1928 issued their report (*k*), which falls into two main parts, descriptive and critical. [592]

In the first part they summarised the history of the question, and in particular of the Birmingham bank, and gave some account of existing facilities for the encouragement of thrift. In the second part they considered the inferences to be drawn from the facts; examined the principles involved in the establishment of municipal savings banks, the advantages claimed for them, the risks to which they might be exposed and the reactions which they might be expected to produce upon the credit structure; and finally they dealt with certain subsidiary questions which arose out of their inquiry. The committee's main conclusions were briefly summarised as follows:

- (1) Municipal savings banks would provide some additional incentive to thrift, but the proportion of new savings which they, and they alone, would obtain is small in relation to the whole.
- (2) They might tend to increase municipal expenditure and would involve banking risks which might react unfavourably both on municipal finance and on the general credit system.
- (3) The general establishment of such banks within the next ten years would cause serious embarrassment to national finance, during what is likely to be a very difficult period.
- (4) Certain suggestions regarding the Birmingham bank were made, but no definite recommendations.
- (5) Consideration should be given to the possibility of making certain improvements of the existing savings banks.

The report was unfavourably received in municipal circles, and it was thought that the prospects of further powers of this kind were very remote (*l*). [593]

**Powers of other Local Authorities.**—However, in 1930, the corporations of Birkenhead and Cardiff each obtained by local Act (*m*) powers to establish a savings bank to be carried on in accordance with regulations prescribed by the Treasury or by the corporation with the approval of the Treasury, and to establish a housing department of the savings bank for the purpose of making advances to assist depositors to purchase houses. Beyond the making of regulations (*n*) for the management of the Cardiff bank, no steps have as yet been taken by either corporation to establish a savings bank.

The Cardiff regulations provide as to investment of funds that 5 per cent. of the total deposits shall be retained in cash or on deposit with a joint stock bank, that not more than 25 per cent. of the total deposits may be invested in housing advances, that at least 45 per cent. shall be invested in Government securities, and that the balance, placed on deposit with the corporation, shall be subject to withdrawal at six months' notice. The rate of interest payable from time to time on deposits with the corporation is to be notified to the Treasury. The

(*k*) Cmd. 3014, 1928.

(*l*) In the House of Commons on February 22, 1928, a motion "that the extension of municipal banks is unnecessary and undesirable" was carried by 219 votes to 111.

(*m*) Birkenhead Corp'n. Act, 1930, ss. 95–96 (20 & 21 Geo. 5, c. lxxxii.), and Cardiff Corp'n. Act, 1930, ss. 137, 138 (20 & 21 Geo. 5, c. clxxiv.).

(*n*) The Cardiff Municipal Bank Regulations, 1931.

rate of interest to be paid to depositors is at the rate of  $2\frac{1}{2}$  per cent. per annum on ordinary deposits (which are normally limited to £500 in any one year), and at the rate of  $8\frac{1}{2}$  per cent. per annum on fixed deposits (normally limited to £1,000 in all) subject to variation from time to time with the approval of the Treasury. The general rate fund is charged for the purpose of guaranteeing the payment of interest and the repayment of deposits. In other respects the regulations mainly correspond with the Birmingham bank regulations (o). [594]

An account of municipal banks would be incomplete without reference to an unofficial form of savings bank which has been established in close association with the corporation in several towns, notably in Scotland (p).

The procedure generally followed in the constitution of such a bank is to register a private company under the Companies Act, 1929 (q), members of the council becoming shareholders and directors, in their private capacities.

A savings bank operated in this way has, of course, no legal association with the corporation, and the depositors would have no recourse against the corporation, but the stated objects of the company are to receive money on deposit at interest and to invest such deposits with the corporation. Thus it is claimed that thrift is encouraged and a source of cheap borrowing is created for the corporation. It seems to be the practice for the business of the bank to be conducted at the corporation's offices by officers of the corporation. [595]

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(o) The Birmingham Municipal Bank Regulations, 1930 and 1932.

(p) The Kirkintilloch Municipal Bank, Ltd., was the first of such banks to be established, in 1920. Similar banks are in operation in other towns in Scotland, and also in Walthamstow and Barnsley.

(q) 2 Halsbury's Statutes 784; s. 17 (2) provides that except with the consent of the Board of Trade, no company shall be registered by a name which contains the word "Municipal" or in the opinion of the registrar of joint stock companies suggests, or is calculated to suggest, connection with any municipality or other local authority.

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## MUNICIPAL BUILDINGS

*See OFFICIAL BUILDINGS.*

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## MUNICIPAL CHARITIES

*See CHARITIES.*

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## MUNICIPAL CHARTERS

*See RECORDS AND DOCUMENTS.*

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## MUNICIPAL CORPORATIONS

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*See also titles :*

ALDERMEN ;	CREATION OF CITIES ;
BOROUGH COUNCILLOR ;	FREEDOM OF CITY OR BOROUGH ;
BOROUGH POLICE ;	LOCAL GOVERNMENT ELECTORS ;
CHARTERS OF INCORPORATION ;	LORD MAYOR ;
COMMON LAW CORPORATIONS ;	MAYOR ;
CORPORATE LAND ;	METROPOLITAN BOROUGH ;
COUNTY BOROUGH ;	NON-COUNTY BOROUGH ;
COUNTY OF A CITY OR TOWN ;	QUARTER SESSIONS BOROUGH ;

**Introduction.**—The constitution and functions of municipal corporations are dealt with in many other titles and no more than a general sketch is necessary here.

Originally the term "municipal corporation" was used for those cities, boroughs or towns, the inhabitants of which had been incorporated by a Royal charter or which claimed to be a borough by virtue of a lost charter or by custom. Some were market towns, others grew up round a castle or abbey, and again others were incorporated by the Crown in order to protect its interests against those of neighbouring feudal landowners. The charter of incorporation usually gave them the power of self-government through a mayor and council, and later powers in regard to water supply and the protection of the public health were conferred on the councils of boroughs to which the Municipal Corporations Acts extended. Before the passing of the Municipal Corporations Act, 1835 (*a*), the status of each borough was investigated by a Royal Commission, with the result that many areas claiming to be boroughs were excluded from that Act, which was declared to extend only to those places which were entered as boroughs in the schedules to the Act, and to places to which the Act was afterwards extended by Royal charter. The municipal corporations of most of the boroughs excluded from the Act of 1835 were dissolved by the Municipal Corporations Act, 1883 (*b*). We thus obtain the foundation of the definition of "municipal borough" in sect. 15 of the Interpretation Act, 1889 (*c*), as meaning in all Acts passed after January 1, 1890, any place for the time being subject to the Municipal Corporations Act, 1882, which replaced the Act of 1835. [596]

The term "municipal corporation" was defined in sect. 7 of the

(*a*) Repealed and replaced by the Municipal Corpns. Act, 1882 ; 10 Halsbury's Statutes 576.

(*b*) 10 Halsbury's Statutes 673. See also p. 180 of Vol. III.

(*c*) 18 Halsbury's Statutes 998.

Municipal Corporations Act, 1882 (*d*), as "the body corporate constituted by the incorporation of the inhabitants of a borough."

As mentioned in the titles CREATION OF CITIES (*e*) and COUNTY OF A CITY OR TOWN (*f*), no distinction was made in the list of boroughs scheduled to the Municipal Corporations Act, 1835, between cities and boroughs or between those towns which were counties of cities or towns and those which were not counties.

By the L.G.A., 1888 (*g*), certain of the more important boroughs were created county boroughs, as described in the titles COUNTY BOROUGH (*h*) and COUNTY BOROUGH, CREATION OR ALTERATION OF (*i*), and so possess all the functions of a municipal borough under the Act of 1882, and most of those of county councils under the Act of 1888. By sect. 1 of the L.G.A., 1933 (*k*), for the purposes of local government, England and Wales is divided into administrative counties and county boroughs, and administrative counties are divided into county districts, which include non-county boroughs (*l*), and in the First Schedule (*m*) a list is given of county boroughs and non-county boroughs existing in 1933. These may be added to from time to time by the creation of new non-county boroughs and by the constitution as county boroughs of non-county boroughs, though no new county borough has been constituted since the Act of 1933. By a saving in the L.G.A., 1888, repealed and replaced in the L.G.A., 1933 (*n*), save in so far as might be necessary to give effect to any alterations or definition of boundaries expressly authorised by the Act, nothing in it was prejudicially to alter or affect the rights, privileges and immunities of any municipal corporation, or the operation of any municipal charter. It is to be noticed that before the passing of the L.G.A., 1888, municipal corporations, with unimportant exceptions, were of one class only, but the passing of that Act, in dividing them into county boroughs and non-county boroughs, marked the end of the old "borough" as one homogeneous class of local authority and the distinctions between the county and the non-county boroughs are now very marked. The metropolitan borough has a totally different structure from the county or non-county borough. The incorporation is only of the council of the borough and they owe their origin not to charters but to Orders in Council (*o*). [597]

**Status and Functions.**—A municipal corporation may thus act for a county or non-county borough, a city or a county of a city or town. It is the inhabitants who are incorporated (*p*), not the council of the borough, as has been pointed out in the title CHARTERS OF INCORPORA-

(*d*) 10 Halsbury's Statutes 577. The same definition is given in s. 305 of the L.G.A., 1933; 26 Halsbury's Statutes 466.

(*e*) Vol. IV., p. 253.

(*f*) *Ibid.*, p. 194.

(*g*) S. 31 and Sched. III.; 10 Halsbury's Statutes 708, 771.

(*h*) Vol. IV., p. 147.

(*i*) *Ibid.*, p. 156.

(*k*) 26 Halsbury's Statutes 806.

(*l*) See title NON-COUNTY BOROUGH.

(*m*) 26 Halsbury's Statutes 470.

(*n*) S. 301; 26 Halsbury's Statutes 464.

(*o*) See s. 1 of the London Government Act, 1899; 11 Halsbury's Statutes 1225, and title METROPOLITAN BOROUGH.

(*p*) In a metropolitan borough it is the council who are incorporated, not the inhabitants.

tion (g), but by sect. 17 (1) of the L.G.A., 1933 (r), the corporation are given power to act through the borough council. They still, however, retain their status as a common law corporation (s) and have power to hold land for the purposes of their constitution without licence in mortmain (t).

By sect. 186 of the L.G.A., 1933 (u), the council of a borough have power to levy rates, and by sect. 185, these, with all other receipts including the rents and profits of corporate land, are to be carried to a general rate fund. The method of audit of the general accounts of a municipal borough usually differs from that of other local authorities, and is set out in sects. 237 to 240 of the L.G.A., 1933 (a). By sect. 249 of the Act (b), the council of a borough, whether county or non-county, may make bye-laws for its good rule and government and for the suppression of nuisances therein. [598]

The promotion of a Parliamentary Bill by a borough council is subject to the approval of the electors under sect. 255 of and Sched. IX. to the L.G.A., 1933 (c). Some boroughs maintain a police force; see the titles WATCH COMMITTEE and BOROUGH POLICE; for their special privileges in regard to the administration of justice, see the title QUARTER SESSIONS BOROUGH.

By sect. 17 (1) of the L.G.A., 1933, the municipal corporation is to bear the title of lord mayor (or mayor), aldermen and citizens of the city or mayor, aldermen and burgesses of the borough, as the case may be. [599]

**Membership.**—By the definition given above (d) the members of the municipal corporation are the inhabitants of the borough or city. The freemen do not necessarily form part of the municipal corporation (e). But as already stated, the inhabitants act by the council of the borough, and by sect. 17 (2) of L.G.A., 1933 (f), this consists of the mayor, aldermen and councillors, who are to exercise all the functions vested in the municipal corporation. An alternative appellation for the council of a borough is a town council.

The qualifications, terms of office, and election of mayors, aldermen and councillors are described in the titles ALDERMEN, BOROUGH COUNCILLORS, LOCAL GOVERNMENT ELECTORS, LORD MAYOR and MAYOR, and are set out in sects. 18—30 of the L.G.A., 1933 (g), which refer equally to county and non-county boroughs. It is to be noticed with regard to the qualifications for election and holding office, the disqualifications, the declaration of acceptance of office, resignation and the filling of casual vacancies, that the procedure in the case of borough councils is the same as for other local authorities (h). [600]

(g) Vol. III., p. 131 *et seq.*

(r) 26 Halsbury's Statutes 313.

(s) See title COMMON LAW CORPORATION, Vol. III., pp. 292—302.

(t) S. 17 (8); 26 Halsbury's Statutes 313.

(u) 26 Halsbury's Statutes 407.

(a) *Ibid.*, 433—436. See titles AUDIT, AUDITORS.

(b) *Ibid.*, 439.

(c) *Ibid.*, 444, 510.

(d) *Ante*, p. 280.

(e) See title FREEDOM OF CITY OR BOROUGH, and *Lincoln Corp'n. v. Holmes Common Overseers* (1867), L. R. 2 Q. B. 482; 33 Digest 50, 302.

(f) 26 Halsbury's Statutes 313.

(g) *Ibid.*, 313—320.

(h) See ss. 57—68 of L.G.A., 1933; 26 Halsbury's Statutes 333—343.



**Procedure at Meetings.**—The procedure at meetings, and the proceedings otherwise of local authorities are governed by sects. 75 and 266 of and the Third Schedule to the Act of 1933 (*i*). Part II. of that Schedule (*k*) contains the regulations as to borough councils, and Part V. relates generally to all local authorities, and among other matters, allows standing orders to be made by borough councils for the regulation of their proceedings and business. Subject to differences in standing orders, therefore, the procedure both in county and non-county boroughs is the same. [601]

**Officers and Staffs.**—By sect. 106 of L.G.A., 1933 (*l*), the council of every borough are to appoint fit persons to be town clerk, treasurer, surveyor, M.O.H., sanitary inspector or inspectors, and any other officers necessary for the efficient discharge of the functions of the council at reasonable remuneration. The provisions of sect. 108 (*m*), however, apply to medical officers of health and sanitary inspectors of boroughs, and their qualifications and mode of appointment are governed by regulations of the M. of H. (*n*). A vacancy in the office of town clerk or treasurer must be filled within twenty-one days after its occurrence, and the offices must not be held by the same person, or by persons who stand in the relation to one another of partners or of employer and employee (sect. 106 (3), (5)). Officers to assist the town clerk in the work of registration or of conducting Parliamentary elections may be assigned, as may be agreed upon between the council and the town clerk. As regards other questions relating to staff the officers and staff of a municipal corporation are in the same position as those of other local authorities (*o*). [602]

**Property.**—By sect. 305 of the L.G.A., 1933 (*p*), corporate land means land belonging to, or held in trust for, or to be acquired by or held in trust for, a municipal corporation otherwise than for an express statutory purpose. As to corporate land, see that title (*q*).

As regards property acquired for the discharge of statutory functions, municipal corporations are in the same position as other local authorities in regard to the acquisition and disposal of land (*r*), the acceptance of gifts (*s*) and the provision of offices and buildings (*t*). [603]

(i) 26 Halsbury's Statutes 346, 495.

(k) *Ibid.*, 497, 498.

(l) *Ibid.*, 361.

(m) *Ibid.*, 368. See title MEDICAL OFFICER OF HEALTH.

(n) See the Sanitary Officers (Outside London) Regulations, 1935; S.R. & O., 1935, No. 1110.

(o) See titles OFFICERS and STAFF.

(p) 26 Halsbury's Statutes 406.

(q) Vol. IV., p. 78.

(r) L.G.A., 1933, ss. 156—166; 26 Halsbury's Statutes 391—398.

(s) *Ibid.*, s. 268; *ibid.*, 440.

(t) *Ibid.*, s. 125; *ibid.*, 372.

## MUNICIPAL CORPORATIONS, ASSOCIATION OF

*See also titles : ASSOCIATIONS ;  
CONFERENCES.*

On February 27, 1873, a meeting of representatives of forty-eight municipal corporations was held in London at the Westminster Palace Hotel with the mayor of Manchester in the chair, and, on the motion of the mayor of Birmingham, seconded by a representative of Manchester, and supported by the City of London solicitor, it was resolved "that an Association of Municipal Corporations be immediately formed, in order, by a complete organisation, more effectually to watch over and protect the interests, rights and privileges of municipal corporations as they may be affected by Public Bill legislation, and in other respects to take action in relation to any other subjects in which municipal corporations may be generally interested." At the same meeting, the Lord Mayor of London agreed to act as treasurer of the Association, and the Lord Mayor of each succeeding year has since performed that office. The first meeting of the Association took place on March 20, 1873.

The Association (a) is under the management of a council whose members are elected every year and consists of representatives of the five county boroughs with the largest population, thirty-five other county boroughs, forty non-county boroughs, the City of London and the metropolitan boroughs and Northern Irish boroughs. The council, apart from the administration of the work of the Association, appoint committees, make rules as to the conduct of business, hold meetings at which the reports of the various committees are presented for adoption or amendment, present a report to the annual meeting and hold various conferences. The Association also prepares and submits evidence to Royal Commissions and departmental committees. In addition to this a monthly journal is issued, which contains the minutes of the meetings of the Association and general information of interest to members and others. According to the annual report for 1937, 876 cities and boroughs were represented in May, 1937, including several newly constituted boroughs. [004]

The standing committees consist of the Law Committee, the General Purposes Committee, the Education Committee, the Police Committee, the Rating and Assessment Committee, the Housing Committee, the Public Assistance Committee, and lastly, formed in July, 1935, the Municipal Aerodromes Committee. The Public Assistance Committee appoint representatives on a Joint Public Assistance Committee and a

(a) The offices of the Association are Palace Chambers, Bridge Street, Westminster, S.W.1.

Joint Vagrancy Sub-Committee, formed by the Association and the County Councils Association (b).

The expenses of the Association are met from subscriptions, which are paid by the municipal corporations who are members, and based on their population. The Association is one of the bodies mentioned in the Local Government (Conferences) Regulations, 1934 (c), of the M. of H. and the expenses of members or officers attending meetings or conferences of the Association may therefore be paid out of the general rate, under sect. 267 of the L.G.A., 1933 (d). The expenses of attendance of members or officers at meetings or conferences in regard to education may be paid under sect. 126 of the Education Act, 1921 (e), and the regulations of September 6, 1920 (f).

It is now customary for Ministers to consult the Association of Municipal Corporations, in common with other Local Government Associations, in order to obtain collectively the views of the various local authorities before introducing measures affecting them. In some instances the Association has been empowered by Parliament to recommend persons for appointment to membership of assemblies in which it is desirable to have representation of municipal corporations (g). [605]

(b) See title COUNTY COUNCILS ASSOCIATION, Vol. IV., p. 186.

(c) S.R. & O., 1934, No. 690.

(d) 26 Halsbury's Statutes 448.

(e) 7 Halsbury's Statutes 197.

(f) S.R. & O., 1920, No. 1675, made under s. 38 of the Education Act, 1918.

(g) *E.g.* Railways (Valuation for Rating) Act, 1930, s. 2 (2); 23 Halsbury's Statutes 456.

## MUNICIPAL ELECTORS

See LOCAL GOVERNMENT ELECTORS.

## MUNICIPAL HOSPITALITY

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See also title: ADVERTISING BY LOCAL AUTHORITIES.

### PROVISION OF HOSPITALITY

General.—It has generally been the practice for municipal and other local authorities to extend hospitality to bodies or persons who visit a town or district for the purpose of attending conferences or

meetings, or with the object of obtaining information concerning the undertakings of the authority in the district which is visited.

In the City of London each lord mayor now receives from the corporation, out of City cash (revenue from the corporate estates), the sum of £12,500 for civic hospitality and other purposes. Every other lord mayor and mayor has, in varying degrees, certain duties to perform which entail the expenditure of money, public or private, for purposes of hospitality. The councils of most cities, boroughs and districts have to rely upon the powers granted by general Acts of Parliament in connection with the expenditure of public money, although some municipal authorities have funds which can be used for the purpose. [606]

**Mayor's Salary.**—By sect. 18 (4) of the L.G.A., 1933 (b), which replaced sect. 15 (4) of the Municipal Corporations Act, 1882 (c), the council of any borough may pay to the mayor such remuneration as they think reasonable. Any such remuneration when passed by the council becomes the property of the mayor and the corporation cannot control its expenditure, but in practice a mayor normally utilises a greater or less part of his remuneration in extending hospitality to various sections of the population of the borough. He also entertains distinguished visitors and the members of bodies who may happen to hold meetings or conferences in the town. It sometimes occurs that an annual conference or several such conferences consisting of hundreds of delegates take place in a town, and it may be considered desirable to increase the remuneration of the mayor in order to meet the exceptional expenditure involved. Further, an event of national importance may take place during a mayor's year of office, for instance a royal marriage, a jubilee or a coronation, which leads to extra hospitality. Provided the resolution increasing the remuneration is passed in good faith and is not a colourable addition to the remuneration merely that the addition may be applied in making payments which could not be justified if those payments were made directly by the corporation, the practice appears to be legal (d). Although the court in the *Cardiff Case* (d) did not view with favour a separate dealing with any addition to the mayor's salary, as by paying it to a separate account, the practice in some localities is for exceptional payments made to a mayor in special circumstances to be paid by him into a separate fund which is administered by a committee of the council, e.g. a reception committee or hospitality committee.

There are, however, other ways in which public funds may be legally expended for such purposes as those outlined above. [607]

**Local Act Provisions.**—Many corporations have obtained powers by special Acts to pay out of the general rate fund (1) reasonable subscriptions whether annually or otherwise to the funds of any association of municipal corporations or other local authorities or their officers formed for the purpose of consultation as to their common interests, and the discussion of matters relating to local government, and any reasonable expenses of the attendance of any members or officers of the corporation not exceeding in any case four, at conferences

(b) 26 Halsbury's Statutes 314.

(c) 10 Halsbury's Statutes 581.

(d) *A.-G. v. Blackburn Corpn.* (1887), 57 L. T. 385; 33 Digest 85, 548; *A.-G. v. Cardiff Corpn.*, [1894] 2 Ch. 337; 33 Digest 86, 558.

or meetings of such associations or any of them, and the cost of purchasing reports and contributing towards the expenses of the proceedings of any such conferences or meetings; and (2) the reasonable expenses of the corporation in providing public entertainments on the occasion of, or otherwise in connection with, public ceremonies or rejoicing and in the reception and entertainment of distinguished persons residing in or visiting the borough.

The construction of those powers is in most cases a matter for the courts, but it is interesting to observe that in a case over which the Minister of Health had jurisdiction (e) he declined to regard amateur cricketers during an annual cricket festival as "distinguished visitors" who could be entertained at the expense of the public, within the meaning of a section using those words. [608]

**Payments from General Rate Fund.**—CHITTY, J., in a case (f) heard in 1887 expressed some views upon the meaning of sect. 148 (1) of the Municipal Corporations Act, 1882 (g), now replaced by sect. 185 (3) of the L.G.A., 1933 (h), which enacted that if the borough fund (now the general rate fund) is more than sufficient for the purposes to which it is applicable under the Act, or otherwise by law, the surplus thereof shall be applied under the direction of the council for the public benefit of the inhabitants and improvement of the borough. The judge stated, without deciding the point, that there may be special exceptional occasions which would justify the application of a reasonable part of the borough fund for such purposes as the celebration of a jubilee (i), and one method of celebrating public events has traditionally been public hospitality. The surplus must arise, however, from corporate property unaided by rates (k). [609]

**Conferences.**—The expenditure of money in connection with conferences has been dealt with in an earlier volume (l). The Association of Health and Pleasure Resorts have recommended their members to adopt the standard hereunder set out as a maximum in respect of the free facilities and concessions to be granted by them to delegates attending any conference held in their towns by associations, societies or other organisations:

Free accommodation for general meetings and for sectional meetings, but not accommodation for exhibitions, demonstrations or any revenue producing function. If such latter accommodation is provided it should be paid for by the promoters of the conference.

A reception and dance with light (non-alcoholic) refreshments. Any luncheon or dinner provided should be for a select and limited number only, such as the members of an executive committee.

A motor tour of inspection of any undertaking or undertakings under the control of the local council; any other motor tour should not

(e) Folkestone, 1933.

(f) *A.-G. v. Blackburn Corpn.* (1887), 57 L. T. 385; 33 Digest 85, 548.

(g) 10 Halsbury's Statutes 623.

(h) 26 Halsbury's Statutes 407.

(i) See also *Re Corpn. of Sunderland* (1878), *Times*, May 2, June 6, 24, July 2; *A.-G. v. East Barnet Valley U.D.C.* (1911), 75 J. P. 484; 33 Digest 19, 82.

(k) *A.-G. v. Newcastle-upon-Tyne Corpn.*, [1892] A. C. 508; 33 Digest 85, 550.

(l) See title CONFERENCES; also L.G.A., 1933, s. 267; 26 Halsbury's Statutes 448.

proceed beyond a reasonable distance from the town in which the conference is held.

Free admission to entertainments owned or controlled by the council, except during Bank Holiday periods.

Free use of chairs on the sea front, in pleasure grounds, etc.

Free use of bowling greens, tennis courts, golf courses, putting greens and similar recreation grounds and free bathing facilities.

The free facilities should be available only to the delegates and to the registered friends accompanying them and should be limited to the period of the conference.

Officers of the host-town should not act as local secretaries for the conference, and their duties in connection with the conference should be limited to the provision of the facilities and the organisation of the social functions above mentioned. [610]

**General Expenditure.**—In counties, districts, and those boroughs where the accounts are subject to district audit, it is the duty of district auditors (*inter alia*) to disallow at every audit held by them every item of account which is contrary to law (see title AUDIT). But there is an important proviso to sect. 228 of the L.G.A., 1933 (*m*), to the effect that no expenses paid by an authority shall be disallowed by the auditor if they have been sanctioned by the Minister of Health. If, therefore, it is considered desirable by any authority whose accounts are subject to district audit to incur expenditure upon hospitality, and no legal powers exist authorising the expenditure, it is open to them to apply for the sanction of the Minister. Apart from this, any council of a county, or of a borough or district, may arrange for the delivery of lectures and the display of pictures in which questions of health or disease are dealt with, and may defray the whole or a portion of the expenses incurred (*n*), and this may be a suitable form of hospitality on some occasions, *e.g.* when a town is the scene of a medical congress. [611]

#### LONDON

**L.C.C.**—Sect. 63 of the L.C.C. (General Powers) Act, 1935 (*o*), empowers the council to make payments not exceeding in all £2,500 a year, for or in connection with the reception and entertainment of distinguished persons and persons representative of or connected with local government or other public services, and for the supply of information to any such persons, visits by way of official courtesy by or on behalf of the council, and the arrangement of ceremonies relative to the statutory functions of the council, including travelling and other expenses reasonably incurred by or on behalf of members or officers. [612]

**City Corporation.**—The hospitality provided by the City Corporation to distinguished visitors so far as it falls upon the Lord Mayor has been already mentioned. Any further expenditure by the City does not fall upon rate funds.

(*m*) 20 Halsbury's Statutes 429; reproducing the Local Authorities (Expenses) Act, 1887, now repealed.

(*n*) P.H.A., 1925, s. 67; 13 Halsbury's Statutes 1145.

(*o*) 28 Halsbury's Statutes 159.

**Metropolitan Borough Councils.**—The payment of a mayoral salary, which may, if the mayor thinks fit, be utilised on ceremonial expenditure, is authorised by the Municipal Corporations Act, 1882, sect. 15 (*p*) (applied to metropolitan borough councils by L.G.A., 1888 (*g*), sect. 75, and London Government Act, 1899, sect. 2 (*4*)) (*r*).

For other expenditure the sanction of the Minister must be obtained under the L.G.A., 1933, sect. 228 (1) (*s*). [613]

(*p*) 10 Halsbury's Statutes 581.  
(*r*) 11 Halsbury's Statutes 1226.

(*g*) *Ibid.*, 746.  
(*s*) 26 Halsbury's Statutes 429.

## MUNICIPAL UNDERTAKINGS

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### See also titles :

AERODROMES ;  
CENTRAL ELECTRICITY BOARD ;  
ELECTRICAL ENGINEER ;  
ELECTRICITY COMMISSIONERS ;  
ELECTRICITY SUPPLY ;  
FERRIES ;  
GAS ;  
HARBOURS ;  
LIGHT RAILWAYS ;

LOCAL GOVERNMENT ;  
MARKETS AND FAIRS ;  
MUNICIPAL BANKS ;  
OMNIBUSES OF LOCAL AUTHORITIES ;  
TRADING REVENUE AND FINANCE ;  
TRAMWAYS ;  
ULTRA VIRES ;  
WATER SUPPLY.

### GENERAL CHARACTERISTICS

**Municipal Public Utilities.**—In sect. 305 of the L.G.A., 1933 (*a*), "undertaking" is defined as meaning "in relation to a local authority the provision of water, gas, electricity, transport, or any other public service which the local authority are authorised to undertake." This definition applies to the undertakings here considered, provided that the words "and any other public service" are understood to refer only to services which are *ejusdem generis* with those named—in other words only to public utilities. "Public utility" is a term of economics rather than of law ; but, although not as yet defined by statute or

(*a*) 26 Halsbury's Statutes 468.

judicially (b), it has come into general use in municipal circles in preference to the less precise expressions "public service" or "public trading service." The distinguishing characteristics of a public utility are (i.) that the costs of production or supply are normally recovered by the undertakers out of charges made direct to those who use the service, (ii.) that the undertakers are not necessarily the local authority or authorities for that area (c), (iii.) that a conditional monopoly within a limited area is granted by Parliament to the undertakers, and (iv.) that among the conditions attaching to the monopoly are some which are designed to protect the consumer against inefficient service or excessive rates of charge. Not all public services nor all public trading services which are in the hands of local authorities satisfy the above conditions. Rate fund services (d) which are a direct charge on the general rate are not public utilities in the sense above defined; nor are those ordinary trading services which particular municipalities occasionally obtain statutory powers to undertake. [614]

**Other Municipal Trading Undertakings.**—There are no specific powers in the general law enabling local authorities to engage in competitive trading undertakings, and although powers have frequently been sought and petitioned for, they have only exceptionally been granted by Parliament and, as the following examples show, usually by way of extension of some existing enterprise under other powers. Thus the provision of a Turkish bath establishment has been authorised in connection with the exercise of powers under the Baths and Wash-houses Acts; the acquisition or construction of a hotel in connection with a municipally owned spa, or in connection with an aerodrome provided under the special powers of the Air Navigation Act, 1920 (e),

(b) Not, that is to say, in the U.K. In the U.S.A., on the other hand, "public utility" has a definite legal meaning, based upon a principle of the English common law. This principle, enunciated by Sir Matthew Hale in his treatise "*de Portibus Maris*" (c. 1070), has often been successfully invoked in American courts, both Federal and State, to validate legislation establishing public control over undertakings which were found to be "affected with a public interest" (see *Munn v. Illinois*, 94 U. S. 113, and—for a definition of "public utility"—*Wolfe Packing Co. Inc. v. Industrial Court*, 262 U. S. 535). The last English case in which the same principle was relied upon was that of *Allnutt v. Inglis* (1810), 12 East, 527; 39 Digest 229, 80, when the Court of King's Bench held that the London Dock Co., having a *de facto* monopoly of warehousing accommodation for wine in bond in the Port of London, must make reasonable charges for its use by the public.

(c) "Statutory undertakers" are defined in L.G.A., s. 305 (26 Halsbury's Statutes 468), as meaning "any persons authorised by an enactment or statutory order to construct, work or carry on any railway, canal, inland navigation, dock, harbour, tramway, gas, electricity, water, or any other public undertaking; compare the similar definitions in the Public Works Facilities Act, 1900, s. 6 (1) (28 Halsbury's Statutes 775); the Town and Country Planning Act, 1932, s. 53 (35 Halsbury's Statutes 521); the Housing Act, 1935, s. 97 (1) (28 Halsbury's Statutes 259). Several types of statutory undertakers are to be found; e.g. a local authority in its own area or in the area of another local authority; a joint board, representing two or more local authorities; a joint stock company empowered by Special Act or Statutory Order; a mixed body—such as a Joint Electricity Authority under the Electricity (Supply) Act, 1919, s. 6 (7 Halsbury's Statutes 756), a nominated board such as the Central Electricity Board, or the London Passenger Transport Board.

(d) In the Local Taxation Accounts, issued annually by the M. of H., Rate Fund Services are distinguished from Trading Services, but the latter include several which are not public utilities in the strict sense.

(e) 19 Halsbury's Statutes 192. With reference to local authorities' hotels, see written answer of the M. of H. to question asked on May 4, 1936, in H. of C. (see Hansard, 5th Series, Vol. CCCXI., 1860). It appears from this answer that



or the manufacture and sale of residual products in connection with a gas supply (f).

Apart from trading undertakings which have been approved as adjuncts of an existing local service, some other municipal enterprises of which the statutory authorisation cannot be so easily accounted for may be cited. Examples are Birmingham's bank (g); Bradford's conditioning house (for local textile purposes); Hull's telephone system (h). These, however, are exceptional cases, and there has been no marked extension of municipal trading in new directions during the present century. The pros and cons of municipal trading in general have been debated in the House of Commons on more than one occasion (i), but the question has only once been made the subject of formal inquiry—in May, 1900, when a Joint Select Committee of the Lords and Commons was appointed "to consider and report as to the principles which should govern powers given by Bills and Provisional Orders to municipal and other local authorities for industrial enterprise within or without the area of their jurisdiction." The committee having reported (on July 27, 1900) the minutes of evidence taken before it, asked to be re-appointed in the next session in order to complete its inquiry (k). Parliament, however, did not move in the matter until May, 1903, when a new Joint Select Committee on municipal trading was appointed with the same terms of reference. This committee confined its attention to one aspect only of the subject—municipal trading accounts, and reported certain recommendations on July 28, 1903 (l) (see *post*, p. 298). [615]

**Monopoly Powers.**—The conditional protection against competition, accorded to statutory undertakers in the administration of their services, is governed by the following principles:

- (i.) In general, and apart from such services as it may be authorised to provide by agreement and consent beyond its own area (m), a statutory undertaker is restricted to service within a defined area (n),
- (ii.) in practice the grant of authority to two or more undertakers to provide the same service in the same area is never made either by Parliament (in the course of local legislation) or by a department of government, possessing statutory powers to make such grants.

in each of the cases cited the municipality did not manage its hotel but leased it to private undertakers.

(f) The special legislation of Wolverhampton affords an illustration. In 1864 the corporation were empowered by local Act, *inter alia*, to maintain market houses and slaughter-houses; in 1900 to provide cold storage in connection therewith for preservation of marketable articles; in 1925 to sell ice.

(g) See title MUNICIPAL BANKS.

(h) The sole surviving example of grants by licence of the P.M.G. to boroughs (of a minimum population of 50,000) under the provisions of the Telegraph Act, 1899; 19 Halsbury's Statutes 288.

(i) *E.g.* in 1900 and in 1930 (see Hansard, 4th Series, Vol. LXXXI., 757—776 and 1946—1975, and *ibid.*, 5th Series, Vol. CXXXXV., 803—892). The last occasion was the debate on the Local Authorities' (Enabling) Bill in February, 1930. This private member's Bill reached the Report stage in the H. of C. In 1935 a Bill on more modest lines was withdrawn without a second reading; in 1936 a Bill was introduced which is awaiting second reading at the time of going to press (May, 1937).

(k) P. 1900, No. 305.

(l) P. 1903, No. 270.

(m) See *post*, p. 299, under INTER-AUTHORITY ARRANGEMENTS.

(n) See, for instance, the restrictions imposed in the matter of supplying water by the P.H.A., 1936, s. 116 (29 Halsbury's Statutes 400); in the matter of gas supply by the P.H.A., 1875, s. 161 (13 Halsbury's Statutes 692).

This is merely a rule of practice. There is no provision in the general law which prohibits the setting-up of two or more statutory authorities in the same field of service. In sect. 1 of the Electric Lighting Act, 1888 (o), the power to authorise more than one undertaker to supply electricity in the same area is specially reserved to the Board of Trade (now the Electricity Commissioners).

Despite the legal protection which is in practice accorded to statutory undertakers they may have to face competition more or less formidable from two quarters: (i.) competition from statutory undertakers in a service which though different in kind is in fact a rival service, (ii.) competition from non-statutory undertakers. These will be considered separately. [616]

**Competitive Services.**—Electricity, for example, competes with gas for all domestic and some industrial purposes; a tramway service with other forms of public transport. Under sect. 161 of the P.H.A., 1875 (p), an urban authority is in effect prohibited from itself undertaking to supply gas (as distinct from contracting for the supply) within such part of its area as lies within the district of a statutory (gas) undertaker (q); but there is nothing to prevent the same authority in such circumstances obtaining a special order from the Electricity Commissioners to supply electricity for those purposes under the Electricity (Supply) Acts, 1882 to 1936 (r). In *Fareham Local Board and Fareham Electric Light Co. v. Smith* (1891) (s) it was held that the restrictions in sect. 161 did not apply to lighting by other means than gas (t).

It is to be observed, however, that a statutory gas undertaker is now protected under the general law against any attempt on the part of a local authority in its area (one, for example, which is an authorised undertaker under the Electricity (Supply) Acts) to restrict the right of the owners or occupiers of premises in which the local authority has an interest to take a gas supply from the company. See Gas Undertakings Act, 1934, sect. 27 (u). By sect. 27 (3) it is declared that "any provision inserted in any instrument" (e.g. in connection with the sale or letting of such premises), "in contravention of this section shall be void." Sect. 27 reproduced in substance clauses which had been inserted in several gas companies' private Acts since 1932 (a). [617]

Under the Electricity (Supply) Acts, 1882–1936, the consent of a local authority to the making of a special order by the Electricity Commissioners, authorising an undertaker to supply electricity within any part of the local authority's district, is necessary; but in the event of refusal the Electricity Commissioners are empowered to dispense with the need for consent (b). Under the Tramways Act, 1870, sect.

(o) See the last sentence of s. 1; 7 Halsbury's Statutes 702.

(p) 13 Halsbury's Statutes 692.

(q) See for definition of "gas undertakers," the Gas Regulation Act, 1920, s. 18 (8 Halsbury's Statutes 1290); as amended by the Gas Undertakings Act, 1934, Sched. II., Part I.; 27 Halsbury's Statutes 330.

(r) 7 Halsbury's Statutes 686 *et seq.*

(s) 7 T. L. R. 443; 26 Digest 393, 1196.

(t) See Michael and Will's Gas and Water, 8th ed.; Gas Volume, note on p. 311.

(u) 27 Halsbury's Statutes 324.

(a) The debate in the House of Commons on the Bill for the Kettering Gas Act, 1932, should be consulted (Hansard, colxiii., 113–156).

(b) See the Electric Lighting Act, 1888, s. 1; 7 Halsbury's Statutes 702, and the Electricity (Supply) Act, 1919, ss. 26, 39; *ibid.*, 772, 777.

4 (2) (c), the consent of the local authority of the district, and (if the two are different) of the road authority as well, were necessary before a provisional order authorising a person or persons, corporation or company to construct a tramway in the same district could be made. In certain circumstances the Board of Trade (now the M. of T.) was empowered to dispense with the consent. Similar powers of veto on the part of a local authority are not found in the law relating to water and gas. In the case of all public utilities, a local authority has a *locus standi* before a private Bill committee or before a local public inquiry in supporting or opposing the grant of powers to an undertaker to operate a service within its own area. [618]

**Non-Statutory Undertakings.**—These are to be found not only in public transport but in the spheres also of gas, water and electricity supply. A non-statutory undertaker may be defined as any person or registered company, primarily engaged in supplying one or more of these services to the public, though not authorised by any private Act or statutory order to give such supply. The principal reason why promoters seek to obtain powers by private Act or order is that they lack compulsory powers to obtain wayleaves over property both public and private, and in particular have need, especially in an urban area, of the power to open up public streets for the purpose of laying pipes, wires or rails. Wayleaves over private and public land (other than the King's highway) can sometimes be obtained by agreement with the private owners or the public authority concerned; hence the existence of non-statutory undertakers. But in the absence of express statutory authority, no person, even with the consent of the local highway authority, has the right to break up any portion of the King's highway. To do so is to commit a nuisance indictable at common law, and the attempt to do so may be restrained by injunction. Once established, however, non-statutory undertakers enjoy certain advantages in competition with statutory undertakers. As a rule the former are (i.) free to supply premises in any area, (ii.) unrestricted (save, in the case of a registered company, under the capital clause in the Memorandum of Association) in the matter of raising capital, (iii.) unrestricted in the matter of rates or charges, and (iv.) under little if any public control in respect of quality or regularity of service. In the fields of gas and electricity supply these principles apply only subject to the important qualifications noticed below. [619]

With respect to water, all owners of a supply, whether they use it for public or private purposes, come under public control in so far as sect. 140 of the P.H.A., 1986, extends. The section (d) enables any local authority to take appropriate action through a court of summary jurisdiction to close, or restrict the use of, water from any well, tank or other source of supply not vested in them which is, or is likely to become, in their opinion, so polluted as to be prejudicial to health if the water is or is likely to be used for domestic purposes, the preparation of food or manufacturing drink for human consumption. Competition in the sale of water by non-statutory undertakers is not the most

(c) 20 Halsbury's Statutes 7.

(d) The power recited in the text is that which will be available from October 1, 1987, when s. 140 of the P.H.A., 1986, will come into force (29 Halsbury's Statutes 425). The language has been modernised and the power extended. At the time of going to press the corresponding s. 70 of the P.H.A., 1875 (18 Halsbury's Statutes 654), is still in force.

serious menace to municipal undertakings, since the former are as a rule restricted to small supplies through their inability to open up public streets; a more formidable danger from the point of view of local authorities, engaged in water supply, either as contractors or as undertakers, is the fact that any private property owner is entitled (c) to abstract for his own purposes any quantity of water flowing in undefructed channels through his land. Such abstraction may, and according to the evidence of the British Waterworks Association (f) often does, result in a serious diminution of the sources of water supply available for public and private purposes in the district comprising the owner's land and elsewhere. [620]

In electricity supply non-statutory undertakers (for the most part of small plant capacity) who contract to supply current for public lighting and other purposes have been numerous. Down to April, 1910, the only restrictions imposed upon them were in relation to the position of their lines and works under regulations made by the Board of Trade (now the Electricity Commissioners) and the Postmaster-General in pursuance of the Electric Lighting Act, 1888, sect. 4 (g). On April 1, 1910, the Electric Lighting Act, 1909, came into force and sect. 23 of the Act (h) prohibited any local authority, company or person from commencing to supply or distribute electricity without special statutory authority within the area of an authorised undertaker. The Electricity (Supply) Act, 1919, sect. 11 (i), took control a stage further by requiring the consent of the Electricity Commissioners to the establishment of a new or the extension of an existing generating station by "any authority, company or person" except that, in the case of the establishment of a new private generating station, the consent of the commissioners was not required, provided that the owner complied with any regulations made by them as to the type of current, frequency and pressure used. [621]

In gas the competition of non-statutory companies has been one of many adverse factors in the progress of statutory undertakers. A proposal of the Board of Trade in 1927 that the larger non-statutory companies should be brought under the same degree of public control as that imposed upon statutory companies was endorsed by the National Fuel and Power Committee and was embodied in sect. 9 of the Gas Undertakings Act, 1934 (k). *Inter alia* this section empowers a local authority at any time after January 1, 1939, to apply to the Board of Trade to serve a notice on any non-statutory gas undertaker within its area whose total supply in the year preceding the application appeared to exceed the quantum mentioned in sect. 9 (2), and whose supply within that area was found to be insufficient or otherwise unsatisfactory. Such a notice would compel the undertaker to apply for a special order, containing the restrictive provisions mentioned in sect. 9 (3).

(c) See *Bradford Corpn. v. Pickles*, [1895] A. C. 597; 43 Digest 1076, 124.

(f) See evidence on July 23, 1935, of Sir Albert Atkey (Q. 252), before the Joint Committee on Water Resources and Supplies.

(g) 7 Halsbury's Statutes 703.

(h) *Ibid.*, 752.

(i) *Ibid.*, 758. This section must be read in conjunction with the Electricity (Supply) Act, 1926, s. 18 (2) (7 Halsbury's Statutes 806), which directs the commissioners in any case where their consent is required (under the Electricity (Supply) Acts, 1882-1922) to have regard to the provisions of "this Act" and the effect of any scheme or proposed scheme thereunder before giving or refusing consent.

(k) 27 Halsbury's Statutes 310.

In the sphere of public transport the statutory undertakers established by provisional order under the Tramways Act, 1870 (l), or by special order under the Light Railways Act, 1896 (m), have heretofore had to face severe competition from motor omnibuses, operated by persons and companies who have not found it necessary to seek special powers. The Road Traffic Act, 1930 (n), however, improved the position of municipal tramway undertakings in three respects: (i.) Any local authority which under local Act or order operates a tramway, light railway, trolley vehicle or omnibus undertaking is enabled to run as part of that undertaking public service vehicles (o) on any road within its district and also, with the consent of the Traffic Commissioners for the traffic area in which any other road is situate, on that road. (ii.) The owners of public service vehicles are brought under public control through the necessity laid upon them of applying to the Traffic Commissioners in their area both for *public service vehicle licences* (p) and for *road service licences* (q). (iii.) Any local authority authorised to run public service vehicles is empowered to enter into joint management, joint working or joint purse agreements (r) with any other local authority, authorised to run such services in a district adjacent to their own or with any other person not being a local authority. [622]

#### POWERS AND RIGHTS OF ACQUISITION

**In Respect of Land.**—By the L.G.A., 1938, sects. 156, 157 (s), any local authority other than a parish council has power to acquire any land, whether situate within or without its area, for the purpose of any of its statutory functions, and by sect. 158 may, with the consent of the appropriate Minister, acquire land by agreement for any such purpose notwithstanding that it is not immediately required for that purpose. The exercise of the above powers by local authorities is subject to the conditions or limitations imposed by the general law relating to functions assigned to different types of local authority. Thus the duty placed on local authorities by the P.H.A., 1936, sect. 111 (t), "to provide a supply of water to every part of their district in which danger to health arises from insufficiency or unwholesomeness of the existing supply" is limited by sect. 116 which prohibits a local authority from supplying any part of their district in which they are not already supplying water and which is within the limits of any statutory water undertakers, without the consent of those undertakers. A similar prohibition under the P.H.A., 1875, sect. 161 (u), applies to any urban authority proposing to undertake a supply of gas within such part of its district as lies within the area of a statutory gas undertaker. Moreover the general law may attach special conditions to the

(l) 20 Halsbury's Statutes 6.

(m) 14 Halsbury's Statutes 252.

(n) 28 Halsbury's Statutes 607.

(o) See for definition s. 121 (1); *ibid.*, 686.

(p) See ss. 67—71; *ibid.*

(q) See ss. 72—76; *ibid.*

(r) See for details of such agreements, s. 105; *ibid.*

(s) 26 Halsbury's Statutes 591.

(t) 29 Halsbury's Statutes 407 (comes into operation on October 1, 1937).

(u) 13 Halsbury's Statutes 692.

situation of the land to be acquired (a) or to the quantity of such land (b). Furthermore if for the purpose of acquiring land a local authority requires to raise a loan, the consent of the sanctioning authority will be necessary. (See below under "Borrowing Powers.")

[623]

Power to acquire land compulsorily by means of an order having effect either with or without approval by Parliament is sometimes conferred by statute on local authorities in respect of certain of their functions. For example, sect. 159 (2) of the L.G.A., 1933 (c), authorises the council of a borough or urban or rural district to purchase compulsorily any land whether situate within or without their area for any of the purposes of the P.H.As., 1875 to 1932, and the Electricity Commissioners under powers conferred by sect. 1 of the Electric Lighting Act, 1909 (d), may by special order authorise any undertaker, authorised to supply electricity in any area, to acquire compulsorily, or to use, for the purpose of a generating station any land, whether situated within or without the area of supply, and in the case of a local authority whether situated within or without their district. Sect. 160 of the L.G.A., 1933, provides a general code for publication and service of notices, etc., wherever a local authority is empowered to purchase land compulsorily by that Act, by certain Acts or orders of earlier date, or by Acts or orders made subsequently (e); and where in any public general Act, passed after June 1, 1934, a local authority are authorised to purchase land by means of a compulsory purchase order, the provisions of sects. 161, 162 of the same Act will apply (f). Similar provisions, relating to the compulsory purchase of land for purposes defined in the Public Works Facilities Act, 1930, are embodied in sect. 2 of that Act (g). By the Expiring Laws Continuance Act, 1936, certain sections of the 1930 Act, including sect. 2 (g) and the whole of the First Schedule, remain in force until December 31, 1937, so that, at least until the end of 1937, it will be possible for any local authority, to whom statutory powers to acquire land compulsorily should be granted for any purpose (including the provision of aerodromes under the Air Navigation Act, 1920), to obtain the necessary power to do so from the appropriate Minister under the simplified procedure of a compulsory purchase order. The Acquisition of Land (Assessment of Compensation) Act, 1919, applies to the valuation of any land for which compulsory purchase has been authorised under powers conferred by any statute passed before or after the Act itself. [624]

**In Respect of the Undertakings of Statutory Companies.**—Under the P.H.A., 1936, sect. 116 (h), a local authority may take on lease, or with the approval of the Minister may purchase, any waterworks or any rights, powers and privileges of any water company, and a corresponding power to lease or sell its undertaking in whole or part to a

(a) See, for example, the Gasworks Clauses Act, 1871, s. 5; 8 Halsbury's Statutes 1264.

(b) See, for example, s. 8 of the Schedule to the Electric Lighting (Clauses) Act, 1899; 7 Halsbury's Statutes 710.

(c) 26 Halsbury's Statutes 392. N.B.—That a local authority has no power to purchase water rights (*i.e.* water flowing in defined channels) otherwise than by local Act.

(d) 7 Halsbury's Statutes 744.

(e) 26 Halsbury's Statutes 393; the provisions and extent of sub-s. (1) should be carefully noted.

(f) *Ibid.*, pp. 394 *et seq.*

(g) 23 Halsbury's Statutes 773.

(h) 20 Halsbury's Statutes 400. Comes into operation on October 1, 1937.

local authority is conferred on any water company (*i*). Similar provision is made in respect of the sale to a local authority of a gas company's undertaking by P.H.A., 1875, sect. 162 (*k*). In both cases sale can only be effected by agreement on such terms as the parties may mutually agree. A power of compulsory purchase of a water or a gas undertaking is rarely conferred on a local authority, and only by local Act. The position is different as regards the undertakings of tramway companies (under the Tramways Act of 1870) and of companies authorised to distribute electricity under the Electricity (Supply) Acts, 1882 to 1936. The Tramways Act, 1870, provides for the acquisition of a company's tramway undertaking by the local authority for the area in which it is worked; on discontinuance of working (*l*) or on insolvency of the company (sect. 42); or compulsorily at the end of twenty-one years on what is known as "structural" value terms (sect. 43); or by agreement at any time (sect. 44). The precedent set by the Tramways Act was followed by the Electric Lighting Act, 1882, sect. 27. That section was re-enacted and extended by the Electric Lighting Act, 1888, sect. 2 (*m*). It enables the local authority within whose jurisdiction the area of the supply is situate to purchase an authorised company's undertaking within six months of the end of forty-two years and at intervals of ten years thereafter, at the then value of the company's assets without additions for compulsory purchase, goodwill or future profits. Under the Electric Lighting Act, 1909, sect. 7 (2) (*n*), a local authority may transfer its power to purchase part of a company's undertaking to any other local authority having power to purchase another part of the same undertaking. The consent of the Electricity Commissioners, however, is necessary, and, if the undertaking was authorised before April 1, 1910, of the company also. A power of purchase may be transferred to a joint electricity authority established under the Electricity (Supply) Act, 1919, sect. 18 (*o*), by the order establishing that authority or by an amending order. Special conditions of purchase apply in the case of a company authorised by special order to supply an area which includes the whole of the districts of two or more local authorities; the purchasing authority is in that case either a joint electricity authority (if the area of supply is situated wholly or mainly within its district), or a local authority acting through a joint committee or a joint board, constituted under the Electric Lighting Act, 1909, sect. 8 (*p*). [625]

#### FINANCE

**Borrowing Powers.**—By the L.G.A., 1933, sect. 195 (*q*), local authorities are empowered to borrow, with the consent of the sanctioning authority, for the purpose *inter alia* of acquiring any land which they have power to acquire, for erecting any building which they have power to erect, for executing any permanent work, for providing any plant, or for doing any other thing which they have power to execute, provide or do. The sanctioning authority is, in general, the Minister of Health, but, in the case of sums borrowed for the purposes of the Electricity (Supply) Acts, 1882–1936, is the Electricity Commissioners, and, in the case of sums borrowed for the purposes of

(*i*) P.H.A., 1936, s. 122; 29 Halsbury's Statutes 414.

(*l*) See s. 41; 20 Halsbury's Statutes 23.

(*n*) *Ibid.*, 749.

(*p*) *Ibid.*, 749.

(*k*) 13 Halsbury's Statutes 693.

(*m*) 7 Halsbury's Statutes 702.

(*o*) *Ibid.*, 761.

(*q*) 26 Halsbury's Statutes 412.

tramways or light railways or for the purposes of Part V. of the Road Traffic Act, 1930 (r), the Minister of Transport. By the L.G.A., 1933, sect. 198 and Sched. VIII. (s), (1) every sum borrowed must be repaid within such period as the local authority may with the consent of the sanctioning authority determine. The maximum period for repayment must not exceed thirty years for the purposes of a tramway undertaking; for the purposes of Part V. of the Road Traffic Act, 1930 (r), such period as the Minister of Transport may sanction; and in any other case, sixty years. (2) In the case of sums borrowed by a local authority for works forming part of a revenue-producing undertaking, the annual provision for repayment may be suspended for such period, and be subject to such conditions, as the sanctioning authority may determine. In practice the suspension is limited to a period during which the expenditure is non-productive, *e.g.* during erection or construction. In the case of municipal undertakings, depreciation of the assets in respect of which monies are borrowed is generally provided for by the requirement to repay within a definite period the loan out of which specific plant is purchased. It is also usual in the Acts or orders authorising loans to allow a reserve fund, usually limited to one-fifth of the aggregate capital expenditure on the undertaking, to be formed. Such a fund may be used to meet any extraordinary claim on the undertaking or for renewing any part of it. By sect. 199 (1) the clerk of a local authority must, within one month after being requested so to do by the Minister of Health, transmit to him a return showing the provision made by the local authority for the repayment of monies borrowed by it. [626]

**Charging Powers.**—By the P.H.A., 1936, sect. 126 (t), a local authority supplying water to any premises may charge in respect of such supply a water rate to be assessed on the net annual value of the premises. They may also, by agreement, supply water at agreed rents. Under this section an urban authority may, on the application of any ten ratepayers, be compelled to charge water rates, or water rents, in respect of all water supplied by them. The local Acts or orders empowering a local authority to supply gas usually fix a maximum price for the gas supplied. Sometimes also a clause is inserted (often referred to as the "Bermondsey" or "Northumberland" clause) the effect of which is to compel the authority at the end of every three years to review and fix its charges so as to obviate as far as practicable any loss on working which might involve a contribution from the rates. The motive underlying such a clause is not so much the protection of the consumer as of the ratepayers. In electricity supply the orders granted to local authorities prescribe maximum prices which are subject to revision by the Minister of Transport at triennial periods on the application of the authority, or a certain number of consumers.

It has been truly observed that the practice of local authorities in recent years is to aim at making their undertakings at least self-supporting and so avoiding any call on the rates, but there is no statutory obligation on them to do so (u). [627]

(r) 23 Halsbury's Statutes 678.

(s) 26 Halsbury's Statutes 414, 510.

(t) 29 Halsbury's Statutes 415. Comes into operation on October 1, 1937.

(u) It is understood that where his approval to charges for such undertakings is required, the M. of H. takes the view that the undertaking should pay its way but not be used in principle as a source of profit (Report on Markets and Fairs, 1927, p. 22: H.M.S.O. Economic Series, No. 13). This view is not confined to market tolls.



**Application of Profits.**—Formerly it was the general rule for local authorities supplying water to apply any surplus profit, after paying working expenses and loan and sinking fund charges, towards the relief of the borough or general district rate, but since 1923 a clause to secure that rates and charges for water should be so regulated that the undertaking should be carried on as far as possible without profit and without loss has been generally inserted in local Acts relating to water supply. The same development is to be observed in the local Acts or orders concerning gas supply by local authority undertakers. Whereas it was formerly the practice of Parliament to authorise them to apply surplus profits in reduction of rates, the recent trend in local legislation has been to limit the amount which may be so applied. Only, however, in the sphere of electricity supply has an attempt been made under the general law to limit the amount of profit that may be appropriated by a local authority undertaker to the aid of the local rate. By sect. 43 of the Electricity (Supply) Act, 1926 (*a*), the Schedule to the Electric Lighting (Clauses) Act, 1899 (*b*) (as incorporated with any local Act or order) is to take effect subject to the amendments comprised in the Fifth Schedule to the Act of 1926. This provision was made retrospective and its effect has been that every local authority which is an authorised undertaker under the Electricity (Supply) Acts is now empowered to appropriate out of the net surplus profits on its undertaking an amount in aid of the local rate not exceeding  $1\frac{1}{2}$  per cent. of its outstanding debt and provided that its reserve fund amounts to more than one-twentieth of the aggregate capital expenditure on the undertaking. Since the general rate fund of a local authority is not only the security for the whole of its loan debt but bears an ultimate liability for any deficiency on its revenue account the above provisions would seem to imply the view that a limited share of surplus profits earned may in fairness be appropriated to the benefit of the general rate. The provision, however, leaves full discretion to the local authority to devote the whole of the net profits on its electricity undertaking to one or more of the other purposes (*c*) mentioned in the Fifth Schedule to the Act of 1926. [628]

**Accounts and Audit.**—In 1903 the Joint Select Committee of the House of Lords and House of Commons on Municipal Trading recommended in their Report (*d*) that the existing systems of audit, applicable to corporations, county councils and urban district councils in England and Wales, be abolished and that professional auditors be appointed in their place by the three classes of local authority mentioned. The committee took the view that for the audit of commercial accounts neither the elective nor the district audit system was satisfactory. Since 1903 the extension among borough councils of the practice of appointing professional auditors in addition to the statutory elective auditors has gone some way to meet the committee's criticisms; and the L.G.A., 1933, sect. 289, has gone a step further by enabling any borough council by special resolution to adopt either the system of district audit or the system of professional audit. The same section

(*a*) 7 Halsbury's Statutes 817.

(*b*) *Ibid.*, 706.

(*c*) *I.e.* in reduction of the charges for the supply of energy or in reduction of the capital monies borrowed for electricity purposes or, with the consent of the Electricity Commissioners, in payment of expenses chargeable to capital.

(*d*) Parl. Papers (1903) 270. (See also *ante*, p. 290.)

also provides that where a borough council has adopted the system of professional audit the provisions of the Act (e) relating to elective auditors shall cease to apply in that borough. [629]

#### INTER-AUTHORITY ARRANGEMENTS

Technical progress and other economic considerations have during recent years complicated the problem of achieving the most efficient forms of administrative organisation in the public utility field. Gas, water, electricity supply, and public road transport furnish examples of new attempts made by Parliament to overcome difficulties created by the fact that existing areas of administration have in many cases proved too small or too rigid for efficient management. Apart from the setting-up by special Acts of new regional authorities in the form of joint boards (e.g. the Metropolitan Water Board) or commissions (e.g. the Central Electricity Board and the London Passenger Transport Board), development has proceeded along the lines of facilitating co-operation between local authorities, and more recently, between local authority and company undertakers. Equally important in electricity, in gas, and in water supply has been the encouragement given by Parliament to undertakers to furnish supplies in bulk to one another. [630]

The Electric Lighting Act of 1909 was the first item of general legislation to recognise the need (1) of extending the area of supply of individual undertakers, and (2) of bulk supply. The first development was favoured by sects. 8, 6 and 8 of the Act; the second by sect. 4 (f). The Electricity (Supply) Act, 1919, contemplated the formation of Joint Electricity Authorities for regional districts to which the authorised undertakers (both local authority and company) within the districts were to transfer their undertakings. Pending the establishment of a Joint Electricity Authority for a district, any two or more of the authorised undertakers within it might, with the approval of the Electricity Commissioners, enter into mutual arrangements for various purposes (g). The Electricity Commissioners were also empowered if they thought fit to insist upon such arrangements being made. With the passing of the Electricity (Supply) Act, 1926, a more drastic policy of reorganisation in the electricity supply industry was inaugurated and a new method of achieving integration throughout the industry was begun.

The policy of encouraging co-operation between undertakers of different types in the same industry can be seen in the Road Traffic Act, 1930, sect. 105 (h), and in the Gas Undertakings Act, 1932, sects. 1, 2 (i). Sect. 1 of the last-mentioned Act empowers any local authority which is a gas undertaker, with the approval of the Board of Trade, to invest in the loan or in the share capital of a gas company up to a specified amount. [631]

The furnishing of supplies in bulk by one undertaker to another has been sanctioned under the general law not only in electricity supply (in which industry the principle has been carried out furthest through the establishment (k) of the Central Electricity Board as a

(e) L.G.A., 1933, ss. 237, 238; 26 Halsbury's Statutes 433.

(f) 7 Halsbury's Statutes 745-749.

(g) S. 10; *ibid.*, 766.

(h) 23 Halsbury's Statutes 680. See also *ante*, p. 294.

(i) 25 Halsbury's Statutes 187.

(k) By the Electricity Supply Act, 1926; 7 Halsbury's Statutes 792.

national wholesale agency with monopoly powers of purchasing current in bulk from the owners of selected generating stations and of selling it to authorised distributors through the country), but more recently in water and gas.

The Supply of Water in Bulk Act, 1934, sect. 1 (1), enables any statutory water undertakers to enter into agreements with any other statutory water undertakers for the giving by the one and the taking by the other of a supply of water in bulk; the agreements so entered into are subject to certain conditions laid down in the section of which the consent of the M. of H. is one. [632]

The Gas Undertakings Act, 1934, sect. 17 (1) (m), enables undertakers in adjoining areas to take supplies in bulk one from another upon such terms as may be agreed between them; and sect. 17 (2) empowers the Board of Trade by special order to authorise any undertakers to give a supply in bulk to any other undertakers through a pipe outside their authorised limits of supply and to lay a pipe for that purpose.

The future of municipal enterprise in the public utility field clearly depends in large measure on whether Parliament implements by legislation the policy favoured in many quarters (n) of reducing the number of existing undertakers and substituting, where appropriate, larger and more economic units. [633]

(1) 27 Halsbury's Statutes 728.

(m) *Ibid.*, 317.

(n) See, for example, the Report of the Committee on Electricity Distribution, June 24, 1936.

## MUSEUMS

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See also titles : ART GALLERIES ;  
LIBRARIES ;  
RECORDS AND DOCUMENTS.

**General Considerations.**—Before the passing of the Public Libraries Act, 1919 (a), museums might be provided and maintained under (i.) the Museums and Gymnasiums Act, 1891 (b), or (ii.) the Public Libraries Acts, 1892 to 1901 (c). The Museums and Gymnasiums Act,

(a) 13 Halsbury's Statutes 966.

(b) *Ibid.*, 846.

(c) *Ibid.*, 850, 890.

an adoptive Act, could be adopted by any urban district either wholly or in so far as it related to museums only. The power to provide museums under this Act ceased, however, on the passing of the Public Libraries Act, 1919, which provided that so much of sect. 4 of the Act of 1891 as authorised the provision of museums in England and Wales should cease to have effect (sect. 9). It may now be adopted only for the purpose of providing gymnasiums. Museums may now, therefore, be provided only under the provisions of the Public Libraries Acts or of a local Act. The Public Libraries Act, 1892, sect. 11 (*d*), enables the library authority (*e*) of any library district for which the Acts have been adopted to provide, *inter alia*, museums. If the Public Libraries Acts have already been adopted (*f*) and any of the institutions which may be provided thereunder have been established no further adoption proceedings are required before a museum may be provided (*g*). The Public Libraries Act, 1919, further provided that where the district for which a museum had already been provided under the Museums and Gymnasiums Act was (in 1919) a library district, or later became one, the museum should be transferred to the library authority of the district and be maintained as though it had been provided under the Public Libraries Acts (*h*).

The present position is that if the Museums and Gymnasiums Act, 1891, was adopted for museum purposes before 1919, in a district not being a library district for the purposes of the Public Libraries Acts, then the museum would continue to be maintained under the Act of 1891 until such time as the district becomes a library district (*i*). If a museum had been established under the Act of 1891 before 1919 in a district being a library district the administration of the museum would forthwith be transferred to the library authority and be maintained as if it had been established under the Public Libraries Acts (*k*). If it is desired to establish a museum in a district where neither the Museums and Gymnasiums Act, 1891, nor the Public Libraries Acts, 1892 to 1919, have been put into effect the Public Libraries Acts must be adopted (*l*). [684]

Where it appears that a museum established and still maintained under the Museums and Gymnasiums Act for seven years or upwards is unnecessary or too expensive it may be sold with the sanction of the Board of Education. Money arising from such a sale must be applied towards the repayment of any money borrowed for the purposes of the museum and, so far as not required for this purpose, must be applied

(*d*) 13 Halsbury's Statutes 854.

(*e*) The library authority in a county is the county council, in a borough or urban district, the borough council or U.D.C., and in a parish the parish meeting or parish council. Since county councils are empowered to provide and maintain libraries they may also provide or contribute towards the maintenance of municipal museums. See, further, title LIBRARIES.

(*f*) As to adoption of these Acts, see title LIBRARIES.

(*g*) Public Libraries Act, 1892, s. 11 (2). 13 Halsbury's Statutes 854.

(*h*) S. 9: 13 Halsbury's Statutes 969.

(*i*) *Ibid.*

(*k*) Proviso to s. 9, *ibid.*

(*l*) As to the restrictions on the power of adoption, see title LIBRARIES. If the Public Libraries Acts have not been adopted in a district situate within the area of a county adoption, the local authority is precluded from adopting the Acts, and unless the county resolution of adoption as respects the district concerned is rescinded the county council will be the authority responsible for the provision of a museum.

to any purpose to which capital money is applicable and which may be approved by the Board (*m*).

Before 1919 many museums were established and maintained under the Act of 1891 as well as in conjunction with public libraries or art galleries under the Public Libraries Acts. For the most part museums, public libraries and art galleries are now provided and maintained under the one authority, the Public Libraries Acts, 1892-1919, and reference should be made to the title LIBRARIES for the powers and duties of local authorities with respect to museums. Where there are non-municipal museums open to the public, containing valuable local or educational material, which are in danger of extinction, it is desirable that these should be acquired by local authorities, in order that historic material may be preserved in the district. [635]

**Lands, Buildings and Equipment.**—A library authority may provide, *inter alia*, museums, and for that purpose may purchase and hire land, and erect, take down, rebuild, alter, repair and extend buildings and fit up, furnish and supply the same with all requisite furniture, fittings and conveniences (*n*).

Urban authorities, not being library authorities, by whom a museum provided under the Act of 1891 is maintained, may erect any buildings and generally do all things necessary for the provision and maintenance of the museum (*o*).

A library authority may purchase land by agreement, but a library authority being also the local authority for higher education may, by order submitted to and confirmed by the Board of Education, be authorised to purchase land compulsorily (*p*). As to other dealings in land, see title LIBRARIES.

New museum buildings should be planned in direct relation to the type of material they are to house, special attention being devoted to workrooms, storage and lighting (*q*). (Advice on museum lighting can be obtained from the National Physical Laboratory, Teddington, Middlesex.)

It is from time to time suggested that historic houses or other buildings already in the possession of local authorities should be converted into museums, or proposals are made that such houses should be acquired for these purposes. Proposals of this kind should be examined very critically and advice obtained from a museum expert, since it is only rarely that old buildings can be successfully adapted. [686]

(*m*) Museums and Gymnasiums Act, 1891, s. 12; 13 Halsbury's Statutes 849.

(*n*) Public Libraries Act, 1892, s. 11; 18 Halsbury's Statutes 854. Sir Henry Miers in his Report on "Public Museums of the British Isles" to the Carnegie United Kingdom Trustees, 1928, recommended that the museum should have its own building. He stated that half of the municipal museums in the country were contained in a room or rooms in, or associated with, the public library. Only 10 per cent. were housed in separate buildings and 20 per cent. were in residential houses. (Pp. 25, 47.)

(*o*) S. 4; 13 Halsbury's Statutes 847.

(*p*) Public Libraries Act, 1892, s. 11 (1) (13 Halsbury's Statutes 854); Public Libraries Act, 1919, s. 6 (*ibid.*, 909); Education Act, 1921, ss. 3 (2), 111 (7 Halsbury's Statutes 131, 190).

(*q*) From the building point of view the prime requisites of a public museum are not only well-lighted and well-ventilated exhibition rooms, but also adequate workrooms and storage space. (Miers' Report, p. 52.)

**Finance.**—As to income and expenditure, accounts and audit, and borrowing, see title **LIBRARIES**.

In the case of a museum provided and still maintained under the Museums and Gymnasiums Act, 1891, all fees received under the Act must be applied towards the expenses of the museum, and so far as such expenses are not so defrayed, they are to be defrayed out of the general rate fund (r). The urban authority may borrow money and for this purpose sect. 195 of the L.G.A., 1933, and sect. 311 of the P.H.A., 1936, relating to loans by the Public Works Loans Commissioners, apply (s). Separate accounts of the receipts and expenditure in connection with the museum must be kept (t).

The rate limit with regard to libraries and museums under the Public Libraries Acts has now been removed, but the former limit of  $\frac{1}{2}d.$  in the pound on the expenditure for a museum provided and still maintained under the Act of 1891 has not been removed; it was increased by 83 $\frac{1}{2}$  per cent. by the L.G.A., 1929 (u).

The Education Act, 1921, sect. 74, provides that a local education authority for higher education may aid teachers and students to carry on research in or in connection with an educational institution and with that object may aid educational institutions (a). Under this section a local education authority may make grants to a museum and allow school parties to go there for instruction (b). The Board of Education may also make grants to museums (c) and for this purpose the Regulations for Grants to Local Museums and Art Galleries were made in 1934 (d). [687]

**Management.**—The supervision of a museum is usually entrusted to a committee of the local authority, generally the library and museum committee or the art gallery and museum committee. As to the appointment of committees, see title **LIBRARY COMMITTEE**.

As to the voluntary transfer of the administration of a museum to the county council, see "Transfer and Relinquishment of Powers" in the title **LIBRARIES**. [638]

**Staff.**—The L.G.A., 1933, provides that the council of a county, borough or urban district may appoint such officers as may be thought necessary for the efficient discharge of the functions of the council (e). Under the smaller authorities the curator may be honorary, or an official of the council already exercising other functions, being either the librarian or art director (f). Where this is the case it is desirable

(r) Museums and Gymnasiums Act, 1891, s. 10 (1); 18 Halsbury's Statutes 849; L.G.A., 1933, Pt. VIII; 26 Halsbury's Statutes 404 *et seq.*

(s) Museums and Gymnasiums Act, 1891, s. 10 (3), as amended; L.G.A., 1933, ss. 195, 307, Sched. XI. (26 Halsbury's Statutes 413, 469, 516); P.H.A., 1936, s. 311 (29 Halsbury's Statutes 520). See also title **BORROWING**.

(t) Museums and Gymnasiums Act, 1891, s. 10 (4).

(u) *Ibid.*, s. 10 (5); L.G.A., 1929, s. 75; 10 Halsbury's Statutes 932.

(a) 7 Halsbury's Statutes 170.

(b) Miers' Report, p. 11.

(c) Education Act, 1921, s. 118; 7 Halsbury's Statutes 193.

(d) S.R. & O., 1934, No. 364.

(e) L.G.A., 1933, ss. 105, 106, 107; 26 Halsbury's Statutes 361—362.

(f) "As a museum grows the principle of an honorary or a part-time curator becomes more and more hopeless and until a whole-time paid curator is appointed proper supervision and direction cannot be assured. As regards staff the librarians-curators generally have to make use of the occasional service of the library staff. In every museum the curator should have at least a whole-time attendant." (Miers' Report, pp. 19, 21, 49, 51.)

that a qualified assistant should be assigned for full-time work in the museum. In larger areas a full-time curator is generally appointed, who should have an adequate education and museum experience if the institution is to be efficient. A broad outlook in a curator is essential and the specialist of limited interests is to be avoided. Experience in museum administration and display, and in the collection and preservation of material, is an essential qualification. Assistants should, wherever possible, have similar qualifications, and it is desirable that juniors should have passed the matriculation examination or its equivalent and have a knowledge of some subject dealt with by the museum. Members of museum staffs should, if possible, be given facilities to attend courses arranged by the Museums Association or other bodies in connection with museum administration. [630]

**Acquisitions and Loans.**—Objects should, generally, be acquired only when they are either of local interest or contribute to a definite museum policy. Gifts of extraneous material, and gifts or loans offered on condition that they be on permanent exhibition, should receive careful attention before acceptance. [640]

**Admission.**—No charge may be made for admission to a museum provided under the Public Libraries Act (*g*).

A museum maintained under the Museums and Gymnasiums Act must be open free to the public on not less than three days in every week. At other times a charge for admission may be made. The use of the museum may be granted, gratuitously or for payment, for lectures or exhibitions or for other purposes of education and instruction (*h*). The urban authority may make regulations for fixing the days of the week or hours of the day during which the museum is to be open free of charge and for fixing the fees to be paid for admission on other days. It may also make regulations for giving special facilities to students and for prescribing conditions on which the exclusive use of the museum or any room is granted in any case (*i*). It may also close a museum for repairs after giving a fortnight's notice (*k*). [641]

**Bye-laws, Regulations and Offences.**—As to bye-laws and regulations relating to a museum established or maintained under the Public Libraries Acts, see title LIBRARIES and see also title BYE-LAWS.

An urban authority not being a library authority, and maintaining a museum under the Act of 1891, may make bye-laws for regulating the conduct of persons admitted to the museum and to provide for the removal by an officer of the authority or by a constable of any person infringing the bye-laws (*l*). Bye-laws made under this provision must be submitted to the Board of Education who may confirm, allow or disallow them (*m*). An urban authority may make general regulations for regulating and managing the museum in addition to those relating to admission (*n*). As to offences in museums, see title LIBRARIES. [642]

(*g*) Public Libraries Act, 1892, s. 11 (3); 13 Halsbury's Statutes 854.

(*h*) Museums and Gymnasiums Act, 1891, s. 5; 13 Halsbury's Statutes 847.

(*i*) *Ibid.*, s. 7.

(*k*) *Ibid.*, s. 8.

(*l*) *Ibid.*, s. 7 (2). See also title BYE-LAWS.

(*m*) M. of H. (Public Libraries, Museums and Gymnasiums, Transfer of Powers) Order, 1920; S.R. & O., 1920, No. 810.

(*n*) Museums and Gymnasiums Act, 1891, s. 7 (1) (*g*); 13 Halsbury's Statutes 848.

**Co-operation with Schools.**—Arrangements may be made for organised visits of school parties to museums, and in connection with these teachers to work at the museum may be employed, either by the local education authority or by the museum committee (*o*).

Organised collections of museum exhibits may also be circulated from the museum to neighbouring schools (*p*). [644]

**Relations with National Museums.**—Advice on subjects connected with the collections, and assistance in preserving these, can usually be obtained from the National Museums. The Standing Commission on National Museums and Galleries has among its objects the promotion of co-operation.

Museums can under certain conditions receive exhibits on loan from the Board of Education through the Circulation Department of the Victoria and Albert Museum (*q*). [644]

**Carnegie United Kingdom Trust.**—This Trust (see title LIBRARIES) initiated in 1930 a scheme of grants to municipal and other museums. The scheme as extended and modified for the period 1936–40 provides for grants not exceeding £500 “to stimulate the introduction of improved methods of display, and to encourage any new activity which will make museums of greater educational value to the community.” In no instance will grants be made merely to assist museums of which the income has become inadequate (*r*). Museums applying must be members of the Museums Association and must have, or be prepared to appoint, a competent curator. In the case of very small museums satisfactory honorary curatorship will be accepted, but where income permits there should be a paid curator at an adequate salary. A further condition is that the annual income of the museum applying must be equivalent to at least 3*d.* per head of the local population. [645]

**County Museum Services.**—County education authorities may, subject to the approval of the Board of Education, contribute towards educational work carried out by museums within their area. A few experimental schemes for the circulation of museum exhibits to schools within county areas, either through the county library headquarters, or from municipal museums (on an equivalent financial contribution being made by the county), are at present being assisted by grants from the Carnegie United Kingdom Trustees, but these experiments for the time being are limited in number (*s*). [646]

**Museums Association.**—This Association was founded in 1880 to improve and extend the work and usefulness of museums and art

(*o*) Memorandum on the possibility of increased co-operation between Public Museums and Public Educational Institutions. (Board of Education Educational Pamphlet, No. 87, 1931, pp. 32–33.)

(*p*) Leicester Museum and the Schools. An illustrated account of the activities of the Museum in relation to Leicester Schools. (Leicester Museum, 1934, pp. 37–39.)

(*q*) Application for regulations should be made to the Director, Victoria and Albert Museum, London, S.W.7.

(*r*) Grants under the Trustees' policy are recommended by a Joint Committee with the Museums Association; applications for particulars should be made to the Secretary of the Association at Chancer House, Malet Place, London, W.C.1.

(*s*) Particulars can be obtained from the office of the Trust, Comely Park House, Dunfermline, Fife.



galleries, its membership being open to individuals and institutions. It holds an annual conference (*t*) lasting one week, at which questions of museum administration are discussed. It also issues a monthly periodical, the *Museums Journal*, publications on the preservation of museum material, and directories of museums. The Association—which, through a joint committee, co-operates with the Carnegie Trustees in the administration of their museum grant policy—is prepared to supply information or advice on any subject connected with museum work. Its headquarters are at Chaucer House, Malet Place, London, W.C.1. [647]

London.—The Public Libraries Acts, 1892–1910, have been adopted in all the metropolitan boroughs and are administered by the metropolitan borough councils. Under the authority of these Acts museums may be provided and maintained, and seven metropolitan boroughs have established museums. The Acts have also been adopted in the City of London and the corporation maintains the Guildhall Library, Museum and Art Gallery. [648]

The L.C.C. is empowered to hold, use, and maintain any lands or buildings which may be from time to time given to it, and to adapt, furnish, equip and maintain, and use such buildings for the purpose of providing for the accommodation, exhibition and preservation of works of art and objects of historical, antiquarian or other public interest in the possession of the council or which may come into its possession by gift, loan or discovery (*u*). The council may also purchase by agreement buildings and places of historical or architectural interest or works of art, or undertake or contribute towards the cost of preserving, maintaining or managing any such buildings and places, and erect and maintain or contribute towards the provision, erection and maintenance of works of art in London (*a*).

The council may also lease any buildings vested in it for the purposes of the section and may make charges for admission to any such buildings which may be under its management and control.

The L.C.C. maintains three museums under the above-mentioned powers. [649]

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(*t*) It is understood that the payment of reasonable expenses of two delegates (usually a councillor and the curator) to the conference from a library authority, whose accounts are subject to district audit, is usually allowed by the M. of H. in virtue of the proviso in sect. 228 (1) of the L.G.A., 1933; 26 Halsbury's Statutes 429.

(*u*) L.C.C. (General Powers) Act, 1906, s. 30; 11 Halsbury's Statutes 1279.

(*a*) L.C.C. (General Powers) Act, 1898, s. 60; *ibid.*, 1224.

## MUSIC

See ENTERTAINMENTS, PROVISION OF.

## MUSIC, SINGING AND DANCING

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**Preliminary.**—The law relating to public music, singing, dancing and other entertainments of the like kind is designed to ensure that proper order is maintained at such entertainments (a) and that adequate precautions are taken for the safety of the public. To secure these objects, a system of licensing has been introduced by statute, but the law varies according to whether or not the premises are situate: (1) in the administrative county of London (b); (2) in the administrative county of Middlesex (c); (3) in the administrative county of Surrey (d); (4) in the administrative counties of Essex and Hertfordshire, and the county boroughs of Croydon, East Ham and West Ham, or in so much of the administrative counties of Buckinghamshire and Kent as is within twenty miles of the City of London or the City of Westminster whichever may be nearer to them (e); or (5) in the remainder of England and Wales.

The area mentioned in group (4) will be referred to in this title as the Home Counties area. [650]

(a) See Disorderly Houses Act, 1751; 4 Halsbury's Statutes 359.

(b) *Ibid.*, as amended by the L.C.C. (General Powers) Acts, 1915, 1923, 1924 and 1935; 19 Halsbury's Statutes 355—358 and 28 Halsbury's Statutes 148.

(c) Music and Dancing Licences (Middlesex) Act, 1894; 19 Halsbury's Statutes 349.

(d) Surrey County Council Act, 1931 (21 &amp; 22 Geo. 5, c. ci.), ss. 33—49.

(e) Home Counties (Music and Dancing) Licensing Act, 1926; 19 Halsbury's Statutes 363, as extended by Essex County Council Act, 1933 (23 &amp; 24 Geo. 5, c. xlv.), s. 91, and the Hertfordshire County Council Act, 1935 (25 &amp; 26 Geo. 5, c. exili.), s. 80.

The position as set out in (1), (2), (3) and (4) above is the result of the operation of later statutes on the Disorderly Houses Act, 1751, which originally applied to the cities of London and Westminster or within twenty miles thereof, and the licensing powers were exercised by the justices in quarter sessions. By sects. 3 (v) and 34 of L.G.A., 1888 (f), the powers of the justices were transferred to county and county borough councils. By the Music and Dancing (Middlesex) Act, 1894, special powers were conferred on the Middlesex County Council in respect of the whole of the administrative county of Middlesex, and in 1925 the Surrey County Council, by a local Act, obtained special powers in respect of so much of the county of Surrey as came within the area prescribed by the Disorderly Houses Act. By the Home Counties (Music and Dancing) Licensing Act, 1926, special powers were conferred on the county councils of Buckinghamshire, Essex, Hertfordshire and Kent in respect of so much of their respective counties as came within the area prescribed by the Disorderly Houses Act and on the county borough councils of Croydon, East Ham and West Ham. [651]

In 1931, the Surrey County Council obtained special powers in respect of the whole of the county of Surrey; and the Home Counties (Music and Dancing) Licensing Act, 1926, has been extended to the whole of the administrative counties of Essex and Hertfordshire by the Essex County Council Act, 1933 (g), and the Hertfordshire County Council Act, 1935 (g), it being provided in each case that Part IV. of the P.H.A. Amendment Act, 1890, shall cease to be in force and shall not be adopted and declared in force in any part of these counties. The extension thus provided by the Essex County Council Act, 1933, does not, however, apply to any borough or district if Part IV. of the P.H.A. Amendment Act, 1890, had been adopted or declared to be in force before January 1, 1933 (h) (Essex County Council Act). The Disorderly Houses Act now only operates so far as music and dancing is concerned in the county of London, and there only as amended by the L.C.C. (General Powers) Act, 1915, and later General Powers Acts; see note (b). [652]

**Necessity of a Licence.**—In the administrative county of London no house, room, garden or other place may be kept for public dancing, music or other public entertainment of the like kind without a licence (i).

In the administrative county of Middlesex no house, room, garden or other place, whether licensed or not for the sale of wines, spirits, beer or other fermented or distilled liquors, may be kept or used for public dancing, singing, music or other public entertainment of the like kind without a licence (j).

In the administrative county of Surrey, a public entertainment of music, singing or dancing or other public entertainment of the like kind may not be given elsewhere than in premises licensed for the purpose in accordance with the provisions of the Surrey County Council Act, 1931 (k).

(f) 10 Halsbury's Statutes 689, 711.

(g) See note (c), p. 307, *ante*.

(h) Essex County Council Act, 1933, s. 91 (3).

(i) Disorderly Houses Act, 1751, s. 2; 4 Halsbury's Statutes 360.

(j) Music and Dancing Licences (Middlesex) Act, 1894, s. 2 (1); 19 Halsbury's Statutes 349.

(k) Surrey County Council Act, 1931 (21 & 22 Geo. 5, c. ci.), ss. 33, 36.

In the Home Counties area (see *ante*, p. 307), a place may not be kept for the purposes of public dancing, singing, music or any other public entertainment of the like kind without a licence (*l*). [653]

In the remainder of England and Wales, unless Part IV. of the P.H.A. Amendment Act, 1890 (*m*), has been adopted by a borough or U.D.C. or declared to be in force in a rural district by an order of the M. of H., or there is a local Act dealing with the matter, no licence is necessary. If Part IV. of the Act of 1890 is in operation (*n*) no house, room, garden or other place, whether licensed or not for the sale of wine, spirits, beer or other fermented or distilled liquors, may be kept or used after the expiration of six months from the adoption of or the application by order of the Act, for public dancing, singing, music or other public entertainment of the like kind without a licence (*o*). It is important, however, to remember that in addition to the local Acts already named, local Acts dealing with music, singing and dancing are in force in several boroughs (*p*). [654]

The word "kept" implies a habitual keeping of the place which need not, however, be at stated intervals (*q*) nor exclusively for the purposes of music and dancing (*r*), and does not apply to the mere temporary or incidental use of the room for such purposes (*s*).

The intermittent use of a wireless set in a part of a public house not open to the public, but audible through rooms and passages frequented by the public, has been held in the special circumstances of the case not to amount to a sufficient degree of continuous or regular user as would justify a conviction under the Act of 1890 (*t*).

Covered or open swimming baths, when closed, may be used by the responsible local authority having power to carry into execution the Baths and Washhouses Acts, 1846 to 1899, for public music and dancing or other public entertainment, provided the local authority obtain such licence as may be required for the use of premises for that purpose under an Act in force in the area concerned (*u*). Where no Act is in force, a licence must be obtained from the council of the county in which the local authority's borough or district is situate, and such local authority are made responsible for any breach of the conditions which may occur during any entertainment given on the premises (*u*). [655]

(*l*) Home Counties (Music and Dancing) Licensing Act, 1926, s. 3 (1); 19 Halsbury's Statutes 863.

(*m*) 13 Halsbury's Statutes 843. As to adoption and declaration by order, see ss. 2, 3, 5.

(*n*) Part IV. has been adopted by 50 county boroughs, 150 non-county boroughs and 208 urban districts and applied by order to 51 rural districts. In four of these areas, viz., one county borough, two boroughs and one urban district, there are local Acts which came into force prior to 1890, but as Part IV. of the Act of 1890 has since been adopted it may be that the local Acts can be treated as having lapsed and these cases have accordingly been included in the figures set out above.

(*o*) P.H.A. Amendment Act, 1890, s. 51 (1); 13 Halsbury's Statutes 843.

(*p*) In addition to the local Acts already named, other local Acts are in force in 20 county boroughs and 3 non-county boroughs.

(*q*) *Archer v. Willingrice* (1802), 4 Esp. 186; 15 Digest 757, 8149.

(*r*) *Bellis v. Beal* (1797), 2 Esp. 501; 42 Digest 919, 144.

(*s*) *Shutt v. Lewis* (1804), 5 Esp. 128; 15 Digest 758, 8163; *Gregory v. Tuffs* (1833), 6 C. & P. 271; 15 Digest 758, 8162; *Gregory v. Tavernor* (1833), 6 C. & P. 280; 15 Digest 758, 8164; *Bellis v. Beal*, *supra*; *Marks v. Benjamin* (1839), 5 M. & W. 565; 15 Digest 758, 8161; *Syers v. Conquest* (1873), 28 L. T. 402; 15 Digest 758, 8166.

(*t*) *Badger v. James* (1934), Br. Tr. Rev. Licensing 510; Digest (Supp.). Cf. 72 J. P. J1. 160.

(*u*) Baths and Washhouses Act, 1896, s. 2; 13 Halsbury's Statutes 873; Baths and Washhouses Act, 1899, s. 2; *ibid.*, 880; P.H.A., 1925, s. 87; *ibid.*, 1154.

A music and dancing licence does not enable its holder to use the licensed premises for stage plays (a) or to obtain an excise licence for the retail of liquor thereon without a justices' licence (a), and the existence of a theatre licence does not dispense with the necessity for a music and dancing licence (b). Places licensed for music and dancing, however, are exempt from the provisions of the Theatrical Employers' Registration Acts, 1925 and 1928 (c). [656]

**Meaning of "Public Dancing, Music, Singing and Other Public Entertainment."**—There is no definition of this phrase in any of the material Acts, and the question whether a particular entertainment is public or not is a question of fact (d).

The fact that the person giving the entertainment is not paid (e) or that the public themselves provide the entertainment, e.g. by dancing for their own amusement (f) or that there is no charge for admission to an entertainment (g) or that the entertainment is given in a licensed tavern (h), does not make it any less a public entertainment within the meaning of the Acts. On the other hand, it has been held that a dancing class to which the general public are not admitted (i), or sacred music played at a meeting for religious worship (k), or the mere singing and playing by customers upon a piano in the smoke room of a public house without any encouragement from the publican (l) does not constitute an infringement of the law. [657]

Difficulty is sometimes experienced in deciding whether the Acts are applicable to public music, singing, dancing or like entertainment given in association with other activities or entertainments not subject to statutory restriction. The decided cases seem to show that if the dancing, music, singing or entertainment of the like kind, is either an independent attraction though collateral to the other activity or entertainment (m), or is an essential ingredient in such other activity or

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The specific requirements and restrictions provided for in s. 87 of the P.H.A., 1925; *ibid.*, 1154, must also be observed. See also *A.-G. v. Walthamstow U.D.C.*, [1910] 1 Ch. 347; 88 Digest 207, 426, as to the responsibility of the local authority for conduct of a lessee, and *A.-G. v. Shoreditch Corpn.*, [1915] 2 Ch. 154; 88 Digest 207, 427, as to necessity for a music licence. It should be remembered when considering these cases that s. 5 of the Baths and Washhouses Act, 1878, and s. 2 (b) of the Baths and Washhouses Act, 1899, have been repealed by the P.H.A., 1925. See now s. 87 of that Act.

(m) *Levy v. Yates* (1838), 8 Ad. & El. 129; 42 Digest 904, 7; *Day v. Simpson* (1865), 18 C. B. (N. S.) 680; 42 Digest 918, 138. See *post*, p. 822, as to exemptions in respect of certain London theatres.

(a) *R. v. Inland Revenue Commissioners* (1888), 21 Q. B. D. 569; 30 Digest 74, 591.

(b) *Syers v. Conquest*, *supra*, note (s), and see also article in 72 J. P. J. 818.

(c) Theatrical Employers Registration Act, 1925, s. 11; 19 Halsbury's Statutes 362.

(d) *Maloney v. Lingard* (1898), 42 Sol. Jq. 198.

(e) *Bellis v. Beal*, *supra*, note (r).

(f) *Clarke v. Searle* (1793), 1 Esp. 25; 15 Digest 758, 8153.

(g) *Archer v. Willingrice*, *supra*, note (q), and *Gregory v. Tuffs*, *supra*, note (s).

(h) *Green v. Botheroyd* (1828), 8 C. & P. 471; 15 Digest 757, 8150.

(i) *Bellis v. Burghall* (1790), 2 Esp. 722; 15 Digest 757, 8148.

(j) *Baeler v. Langley* (1866), L. R. 4 C. P. 21; 15 Digest 759, 8173.

(k) *Brearely v. Morley*, [1899] 2 Q. B. 121; 15 Digest 759, 8172. Cf. police court cases reported in 78 J. P. J. 508 and 79 J. P. J. 448, which seem to show that the degree of organisation necessary to constitute an entertainment within the meaning of the Acts may be very slight.

(l) *Hall v. Green* (1853), 9 Exch. 247; 15 Digest 758, 8165 (musical performance in a hotel); *Gregory v. Towner*, *supra*, note (s) (music and dancing in public house); *Prailing v. Messenger* (1867), 16 L. T. 494; 15 Digest 758, 8152 (music

entertainment (*n*), the entertainment in question comes within the scope of the Acts, but not otherwise.

The first type of case most frequently occurs where a musical performance is given in a place primarily in use for some other purpose, *e.g.* a restaurant, and it has been decided that if there be a musical entertainment regularly carried on in a house to which the public have admittance, such a place is within the Act of Parliament although the place be principally used for the supply of meals, drink and so forth and the musical entertainment is merely collateral (*o*).

The second case is most common where the music, singing or dancing entertainment is in association with some other entertainment. In *Quaglieni v. Matthews* (*n*) the defendant was charged with giving a public music and dancing entertainment without a licence and the evidence shewed that he gave exhibitions of equestrian skill and gymnastics which included dancing on horseback and tight-rope feats, to the accompaniment of a band of six instrumentalists, there being no music during the intervals. The justices convicted the defendant and on a case stated the Divisional Court remitted the case to the justices with their opinion that although there were some music or dancing, if it was merely subsidiary they ought not to have convicted, but if it was a principal or essential part of the performance the conviction would be right. [658]

**Licensing Authorities.**—Within the administrative counties of London, Middlesex and Surrey, the London, Middlesex and Surrey county councils are the respective licensing authorities (*p*). In the Home Counties area (*see ante*, p. 807), the county councils and county borough councils are the licensing authorities (*q*), and a county council may delegate all or any of their powers, other than those relating to the making of regulations, to the council of any borough or urban district having a population according to the last census for the time being of not less than 20,000 so far as relates to places within that area (*r*).

Alternatively a county or county borough council may appoint a committee to consider and decide applications for licences, under the general provision in sect. 85 of L.G.A., 1933 (*s*), and not more than one-third of the committee may consist of persons who are not members of the council (*t*).

In the remainder of England and Wales, if Part IV. of the P.H.A. Amendment Act, 1890, is in force, the licensing powers are exercised

and dancing in public house); *R. v. Tucker* (1877), 2 Q. B. D. 417; 15 Digest 759, 8167 (music at skating rink).

(*n*) *Quaglieni v. Matthews* (1885), 6 B. & S. 474; 34 L. J. (M. C.) 116; 15 Digest 758, 8164; *Fay v. Bignell* (1833), 1 Cab. & El. 112; 42 Digest 019, 145.

(*o*) *Hall v. Green*, *supra*, note (*m*), per PAULKE, B., at p. 251.

(*p*) Disorderly Houses Act, 1951, s. 2; 4 Halsbury's Statutes 360; L.G.A., 1888, ss. 3 (*v*), 40; 10 Halsbury's Statutes 689, 718; L.C.C. (General Powers) Act, 1915, s. 14; 10 Halsbury's Statutes 356; Music and Dancing Licences (Middlesex) Act, 1894, s. 2 (1) (2); *ibid.*, 340; Surrey County Council Act, 1931 (21 & 22 Geo. 5, c. cl.), s. 37.

(*q*) Home Counties (Music and Dancing) Licensing Act, 1926, ss. 1, 2, 3 (2) and First Schedule; 10 Halsbury's Statutes 363, 366.

(*r*) *Ibid.*, s. 4 (2); *ibid.*, 365. Apparently "urban district" should be read as including a borough.

(*s*) 26 Halsbury's Statutes 352.

(*t*) The somewhat similar provision in s. 4 (1) of the Home Counties (Music and Dancing) Licensing Act, 1926, was repealed by L.G.A., 1933.

by the licensing justices of the licensing district in which the premises are situate (*u*). [659]

**Notice of Intention to Apply.**—In the areas to which Part IV. of the P.H.A. Amendment Act, 1890, applies, every person intending to apply for a licence or the transfer of a licence must give fourteen days' notice of such intention to the clerk (*a*) of the licensing authority and to the chief officer of police of the police district (*b*) in which the premises are situate (*c*).

In the administrative county of Middlesex, every person intending to apply for a licence or the transfer of a licence must give fourteen days' notice of such intention to the clerk of the county council and to the superintendent of police of the police division in which the premises are situate (*d*).

Where, however, an application is made for the renewal of an existing licence in respect of the same premises or for the grant of a licence for not exceeding fourteen days, these requirements as to notice do not apply either in the areas to which Part IV. of the P.H.A. Amendment Act, 1890, applies or in Middlesex (*e*). [660]

In the Home Counties area (*see ante*, p. 307) and in the administrative county of Surrey, the applicant must give twenty-one days' notice of his intention to apply for the grant or the transfer of a licence, in the case of the Home Counties area to the clerk of the licensing authority and to the superintendent of police or chief constable of the borough as the case may be in which the place is situate, and in Surrey to the county council and to the chief officer of police of the police division of the county or of the metropolitan police district in which the premises are situate (*f*). The applicant must also for twenty-one days keep a copy of the notice posted in a conspicuous position on the exterior of the premises to which the application relates (*f*). In Surrey these requirements are similar in respect of an application for the renewal of an existing licence (*g*), but in the Home Counties area no notice is required where the application is for the renewal of a licence on the same terms and conditions as the existing licence (*h*). In Surrey, a licence for a period of fourteen days may be granted although the statutory requirements as to notice have not been complied with

(*u*) P.H.A. Amendment Act, 1890, s. 51 (1), (2); 13 Halsbury's Statutes 843. "Licensing justice" and "Licensing district" have the same meaning as in the Licensing (Consolidation) Act, 1910 (*ibid.*, s. 51 (13), and Licensing (Consolidation) Act, 1910, ss. 2, 112 (3); 9 Halsbury's Statutes 980, 1045).

(*a*) For definition of clerk to licensing authority, *see* P.H.A. Amendment Act, 1890, s. 51 (13); 13 Halsbury's Statutes 844, and Licensing (Consolidation) Act, 1910, ss. 48, 112 (3); 9 Halsbury's Statutes 1015, 1045.

(*b*) "Police district" means any area for which a separate police force is maintained, and "chief officer of police" means the chief constable, head constable or other officer having the chief command of such separate police force. P.H.A. Amendment Act, 1890, s. 51 (13); 13 Halsbury's Statutes 844.

(*c*) P.H.A. Amendment Act, 1890, s. 51 (4); 13 Halsbury's Statutes 844.

(*d*) Music and Dancing Licences (Middlesex) Act, 1894, s. 2 (4); 10 Halsbury's Statutes 350.

(*e*) P.H.A. Amendment Act, 1890, s. 51 (10), (11); 13 Halsbury's Statutes 844; Music and Dancing Licences (Middlesex) Act, 1894, s. 2 (10), (11); 10 Halsbury's Statutes 351.

(*f*) Home Counties (Music and Dancing) Licensing Act, 1926, s. 3 (6); *ibid.*, 364; Surrey County Council Act, 1931 (21 & 22 Geo. 5, c. cl.), 1931, s. 37 (4).

(*g*) Surrey County Council Act, 1931 (21 & 22 Geo. 5, c. cl.), 1931, s. 37 (4).

(*h*) Home Counties (Music and Dancing) Licensing Act, 1926, s. 3 (6) (*a*); 10 Halsbury's Statutes 364.

provided seven days' notice has been given to the county council (i); in the Home Counties area (see *ante*, p. 307) a licensee for a similar period may be granted although notice has not been given to the clerk of the licensing authority, provided that seven days' notice is given to the police (k). On consideration of applications by the licensing authority in these areas the police and any person living in the neighbourhood of the premises to which the application relates and whom the licensing authority deem concerned is entitled to be heard (l). [661]

The giving of notice is an important element in the application for a licence, for the licence itself may be invalidated if it be proved that the statutory requirements have not been complied with (m), and whether the notices have been properly posted and served and the necessary procedural requirements have been complied with is a matter for the decision of the licensing authority (n). But notices ought not to be scrutinised as closely as used to be the case with the old forms of pleading (o), and the situation of the premises need not be described in such detail as in a conveyance (p). The number of days specified in enactments as to the giving of notice usually means so many clear days (q).

It has been decided that where the office or residence of a superintendent was outside the licensing area, a notice served at a police office in the district which he occasionally visited was not properly served (r). Service of a notice on the chief police officer of the borough in which the premises were situate, although the petty sessional division comprised not only the borough but an area under the control of another superintendent has, on the other hand, been held to be a good service (s). [662]

**Discretion of Licensing Authority.**—In the administrative county of London, the L.C.C. may grant such licences as in their discretion they think proper (t), and licences for the occasional use of premises may be granted under sect. 55 of the L.C.C. (General Powers) Act, 1935 (u).

The council may grant a provisional licence in respect of premises about to be constructed or in the course of construction, and as respects the discretion of the county council and procedure the grant is subject to the same conditions as a non-provisional licence (a). Though a

(i) Surrey County Council Act, 1931 (21 & 22 Geo. 5, c. ci.), s. 37 (5).

(k) Home Counties (Music and Dancing) Licensing Act, 1926, s. 3 (6); 19 Halsbury's Statutes 364.

(l) *Ibid.*; Surrey County Council Act, 1931, s. 37 (4).

(m) *Ormerod v. Chadwick* (1847), 16 M. & W. 367; 18 Digest 401, 1429; *R. v. James* (1848), 11 L. T. (o.s.) 69; 30 Digest 22, 138; *R. v. Hayhurst* (1897), 61 J. P. 88; 30 Digest 13, 56; *Ex parte Clayton* (1899), 63 J. P. 788; 30 Digest 14, 63.

(n) *R. v. Hayhurst, supra*.

(o) *Cf. R. v. Lyon, Ex parte Skinner* (1898), 62 J. P. 357; 30 Digest 14, 61.

(p) *R. v. Penkridge J.J.* (1892), 61 L. J. (M. C.) 132; 30 Digest 13, 59.

(q) *Mitchell v. Foster* (1840), 9 Dowl. 527; 42 Digest 957, 207; *Freeman v. Read* (1863), 4 B. & S. 174; 42 Digest 933, 66; *R. v. Shropshire J.J.* (1898), 8 Ad. & El. 173; 42 Digest 940, 106.

(r) *R. v. Riley* (1889), 53 J. P. 452; 30 Digest 13, 52.

(s) *R. v. Riley, etc., Kirkham Division of Lancashire J.J.* (1891), 55 J. P. 88; 30 Digest 13, 53.

(t) Disorderly Houses Act, 1751, s. 2; 4 Halsbury's Statutes 360; L.G.A., 1888, ss. 3 (v.), 40; 10 Halsbury's Statutes 689, 718.

(u) 28 Halsbury's Statutes 157.

(a) Metropolis Management and Building Acts Amendment Act, 1878, s. 13; 19 Halsbury's Statutes 344; L.G.A., 1888, s. 40 (8); 10 Halsbury's Statutes 719.



provisional licence will not be in force until confirmed by the county council, the council must confirm it if the applicant produces a certificate that construction of the premises has been completed in accordance with the council's regulations and conditions, and there is no objection to the character of the holder of the provisional licence. [663]

Elsewhere than in London, the licensing authority may grant licences to such persons as they think fit, to keep or use premises (b) for the purpose of public dancing, music, singing or like entertainments (c), upon such terms and conditions and subject to such restrictions as they may determine (d). [664]

Under sect. 51 (2) of the P.H.A. Amendment Act, 1890 (c), the licence must be granted at the general annual licensing meeting of the justices or any adjournment thereof, or at any special session convened with fourteen days' previous notice, and any transfer of a licence must be granted at any such special session (sect. 51 (3)). Under sect. 2 (2) of the Music and Dancing Licences (Middlesex) Act, 1894, the licence must be granted or transferred at a meeting of the county council convened with fourteen days' previous notice or at an adjournment thereof, but a special notice of meeting is not required by sect. 14 of the L.C.C. (General Powers) Act, 1915, or by sect. 8 (2) of the Home Counties (Music and Dancing) Licensing Act, 1926, or by sect. 87 of the Surrey County Council Act, 1931 (f). The Surrey County Council may grant a licence for the use of premises on one or more particular occasions, and during the hours specified in the licence, in which case the general provisions of the Act relating to notice of intention to apply, the exhibition of a notice that the premises are licensed, fees, extension of hours do not apply; a special fee of 10s. or, where the purpose of the entertainment is charitable, of 5s. being payable (*ibid.*, sect. 88). The Surrey County Council may not, except with the consent of the local authority, grant a licence in respect of any premises which are situate within any area reserved for residential purposes only in any town planning scheme (*ibid.*, s. 47). [665]

Such licences are in force for one year (except in the administrative county of Surrey and the Home Counties area (see *ante*, p. 307) where a maximum period of thirteen months is permitted), or for such shorter period as the licensing authority determine, unless the licence has been previously revoked (g).

The licensing authority may also transfer a licence to such person as they think fit (h).

(b) A licence has been held necessary in respect of an open place enclosed by ropes (*Farndale v. Bainbridge* (1898), 42 Sol. Jo. 192; 42 Digest 919, 147).

(c) A licence may be granted for one of these purposes only (*Brown v. Nugent* (1872), L. R. 7 Q. B. 588; 42 Digest 919, 151).

(d) The specific enactment should be referred to viz., P.H.A. Amendment Act, 1890, s. 51 (2) (13 Halsbury's Statutes 843); Music and Dancing Licences (Middlesex) Act, 1894, s. 2 (2) (10 Halsbury's Statutes 349); Home Counties (Music and Dancing) Licensing Act, 1926, s. 3 (2) (*ibid.*, 303); Surrey County Council Act, 1931 (21 & 22 Geo. 5, c. ci), s. 37.

(e) 13 Halsbury's Statutes 843.

(f) 21 & 22 Geo. 5, c. ci.

(g) L.C.C. (General Powers) Act, 1915, s. 14 (3); 10 Halsbury's Statutes 356; and statutes cited in note (d), *supra*. Where no period is fixed by a local Act for the duration of the licence, the licensing authority may grant a licence for one year only, see *Hoffman v. Bond* (1875), 40 J. P. 5; 42 Digest 920, 152. As to powers of licensing authorities to grant licences in respect of entertainments on Sundays, see title SUNDAY ENTERTAINMENTS.

(h) L.C.C. (General Powers) Act, 1915, s. 14 (2); 10 Halsbury's Statutes 356; P.H.A. Amendment Act, 1890, s. 51 (3); 13 Halsbury's Statutes 844; Music

In those cases where there is a statutory requirement that notices should be given of an intention to apply for the grant or transfer of a licence (i), licences may be granted for a period not exceeding fourteen days by the licensing authority, although the notices of intention to apply have not been complied with, except in the Home Counties area (see *ante*, p. 307) where a seven day notice only to the police must be given, and in Surrey where notice of similar duration must be given to the county council (k).

Apart from the special provisions of any local Act, there is no appeal from the decision of the licensing authority to refuse the grant, renewal or transfer of a licence and no ground need be stated for refusal (l). The authority must, however, exercise their discretion properly and in respect of each case, otherwise a *mandamus* will lie, and it is not open to them to adopt a general resolution that they will not grant any new licences (m). [666]

Discretion implies that the decision will be within the rules of reason and justice, and not according to private opinion: according to law and not according to humour. It must not be arbitrary, vague and fanciful, but legal and regular (n).

It is essential that no irregularities, which may interfere with or appear to interfere with the proper exercise of the discretion of the licensing authority, should occur, and it has been held that though members of the licensing authority are not compelled to vote, they should not appear on the licensing tribunal if they do not intend to or cannot vote (o).

Where a member of a licensing authority has been absent during a considerable part of the proceedings before that authority, he should not take part in the authority's deliberations and decision and the position cannot be rectified by deducting his vote from the vote of the other members who properly took part in the decision (p). [667]

A licensing authority when sitting to grant music and dancing licences are not a court, so that a member making slanderous remarks at such a meeting does not receive absolute protection from any action brought against him in respect of such remarks (q). He is only entitled to the ordinary privilege which applies to a communication made without express malice on a privileged occasion (q). It has also been

and Dancing Licences (Middlesex) Act, 1894, s. 2 (3); 19 Halsbury's Statutes 350; Home Counties (Music and Dancing) Licensing Act, 1926, s. 3 (4); 19 Halsbury's Statutes 368; Surrey County Council Act, 1931 (21 & 22 Geo. 5, c. ei.), s. 37 (3).

(i) See "Notice of Intention to Apply," *ante*, p. 312.

(k) P.H.A. Amendment Act, 1890, s. 51 (11); 13 Halsbury's Statutes 844; Music and Dancing Licences (Middlesex) Act, 1894, s. 2 (11); 19 Halsbury's Statutes 351; Home Counties (Music and Dancing) Licensing Act, 1926, s. 3 (6) (b); 19 Halsbury's Statutes 364; Surrey County Council Act, 1931 (21 & 22 Geo. 5, c. ei.), s. 37 (5).

(l) *Ex parte Harrington* (1888), 4 T. L. R. 435; 42 Digest 904, 9.

(m) *R. v. Walsall J.J.* (1854), 3 C. L. R. 100; 30 Digest 29, 204.

(n) *Sharp v. Wakefield*, [1891] A. C. 173, per Lord Halsbury, L.C., at p. 179; 30 Digest 12, 49; *R. v. Cardiff Corp.*, *Ex parte Westlan Productions, Ltd.* (1929), 73 Sol. Jo. 766; Digest (Supp.).

(o) *R. v. Meyer* (1875), 1 Q. B. D. 173; 33 Digest 204, 100; *R. v. L.C.C.*, [1892] 1 Q. B. 190; 33 Digest 103, 698; *R. v. Spurgeon* (1920), *Times*, October 21.

(p) *Goodall v. Biltsland*, [1909] S. C. 1152; 33 Digest 298, 130 VI.

(q) *Royal Aquarium and Summer and Winter Garden Society v. Parkinson*, [1892] 1 Q. B. 481; 33 Digest 104, 699; *Atwood v. Chapman*, [1914] 3 K. B. 275; 16 Digest 90, 11.

decided that where a local Act provided that the justices might grant licences at a special session summoned by fourteen days' previous notice, the justices were not entitled to make a general rule that licensees must be applied for only at their general annual meeting (*r*). [668]

It would not appear open to a licensing authority to revoke a licence which they have granted unless, where the premises are situate in Middlesex, the Home Counties area (see *ante*, p. 307), Surrey, or an area in which Part IV. of the P.H.A. Amendment Act, 1890, is in force, the holder has been convicted in respect of an infringement of the conditions of the licence (*s*), although it has been held that a licensee surrenders his existing licence when he applies for a further licence (*t*).

In the administrative county of London, if the L.C.C. are of opinion that the licensed premises are unsafe for any purpose for which they are licensed by reason of a serious risk of fire or danger to life arising on the premises, owing to the failure on the part of the licensee to carry out or observe any rules or regulations applying to the premises or any conditions attaching to the licence, the council may give him notice requiring him to discontinue the use of the premises for such purpose for so long as the premises remain unsafe (*u*). Such notice must state the grounds upon which the requirement of the council is based, and before it is given the council must give the licensee an opportunity of attending and being heard before the committee of the council dealing with the matter (*u*). If the licensee fails to comply with the notice he is liable on summary conviction to a penalty of £100, and to a further penalty of £50 for every day on which the offence continues after conviction (*a*). After a conviction, the council may revoke the licence should they think fit (*a*). [669]

**Display of Notice.**—In the areas to which Part IV. of the P.H.A. Amendment Act, 1890, applies, and in the administrative county of Middlesex, it is necessary that there should be affixed and kept up in some conspicuous place on the door or entrance of the licensed premises an inscription in large capital letters in the following words, "Licensed in pursuance of Act of Parliament for . . ." with the addition of words shewing the purpose or purposes for which the premises are licensed (*b*).

In the Home Counties area (see *ante*, p. 307) and the administrative county of Surrey, except where the period for which the licence is in force does not exceed fourteen days, a notice to the like effect must be affixed in some conspicuous place on or immediately over and on the outer side of the main entrance, and the notice must be such as to be "easily legible" (*c*). The affixing and keeping up of such inscription

(*r*) *R. v. Oldham JJ., Ex parte Mellor* (1909), 101 L. T. 430; 42 Digest 920, 155.

(*s*) See "Penalties," *post*, p. 321.

(*t*) *Hoffman v. Bond* (1875), 40 J. P. 5; 42 Digest 920, 152.

(*u*) L.C.C. (General Powers) Act, 1924, s. 29 (1); 19 Halsbury's Statutes 357.

(*a*) *Ibid.*, s. 29 (2).

(*b*) P.H.A. (Amendment) Act, 1890, s. 51 (6); 13 Halsbury's Statutes 844; Music and Dancing Licences (Middlesex) Act of 1894, s. 2 (6); 19 Halsbury's Statutes 350.

(*c*) Home Counties (Music and Dancing) Licensing Act, 1926, s. 3 (8); 19 Halsbury's Statutes 364; Surrey County Council Act, 1931 (21 & 22 Geo. 5, c. ci.), s. 37 (8). In Surrey the words "licensed in pursuance of the Surrey County Council Act, 1931," must be used but no such inscription is necessary where an occasional licence is granted (*ibid.*, ss. 37 (8), 38 (1)). See *ante*, p. 314.

must be inserted in and made a condition of every licence (d). The fact that no such inscription is painted on the house is *prima facie* evidence that it is unlicensed (e).

In London, no inscription is necessary (f). [670]

**Opening and Closing Hours.**—In the administrative county of London, licensed premises must not be open for any of the purposes for which they are licensed before the hour of noon (g), but a special licence of exemption from such requirements may be granted by the L.C.C. during such hours or on such occasions or for such period and upon such conditions as the council may prescribe (h).

In areas in which Part IV. of the P.H.A. Amendment Act, 1890, is in force, and in the administrative county of Middlesex, the licensed premises must not be open for any purpose for which they are licensed, except on the days and between the hours stated in the licence (i) and in Middlesex there is an additional statutory requirement that the licensed premises must not be kept open for such purposes after midnight and before the hour of noon (k). [671]

In the Home Counties area (see *ante*, p. 307) and in so much of the administrative county of Surrey as is within the metropolitan police district, licensed premises must not be used for any of the purposes for which they are licensed at any time during the period beginning at midnight and ending at midday except with the written permission of the licensing authority (l). In Surrey where the premises are outside the metropolitan police district, the written consent of the petty sessional court for the division wherein the premises are situate is necessary.

In the administrative counties of London, Middlesex, Surrey and the Home Counties area (see *ante*, p. 307), however, if a special order of exemption has been granted under sect. 57 of the Licensing (Consolidation) Act, 1910 (m), in respect of premises licensed for music and dancing, no penalty will be incurred if the premises are used for the purpose for which they are licensed, from midnight until the hour specified in the special order (n). Except in the administrative county

(d) P.H.A. Amendment Act, 1890, s. 51 (8); 13 Halsbury's Statutes 844. Music and Dancing Licences (Middlesex) Act, 1894, s. 2 (8); 19 Halsbury's Statutes 850; Home Counties (Music and Dancing) Licensing Act, 1920, s. 3 (10); 19 Halsbury's Statutes 865; Surrey County Council Act, 1931 (21 & 22 Geo. 5, c. cl.), s. 37 (10).

(e) *Gregory v. Tuffs* (1833), 6 C. & P. 271; 15 Digest 758, 8162.

(f) L.C.C. (General Powers) Act, 1915, s. 15; 19 Halsbury's Statutes 356.

(g) Disorderly Houses Act, 1751, s. 3; 4 Halsbury's Statutes 361, as amended by Public Entertainments Act, 1875, s. 1; 4 Halsbury's Statutes 681.

(h) L.C.C. (General Powers) Act, 1924, s. 30, printed on p. 356 of 19 Halsbury's Statutes as part of s. 14 (4) of the L.C.C. (General Powers) Act of 1915.

(i) P.H.A. Amendment Act, 1890, s. 51 (7); 13 Halsbury's Statutes 844. Music and Dancing Licences (Middlesex) Act, 1894, s. 2 (7); 19 Halsbury's Statutes 850.

(k) Music and Dancing Licences (Middlesex) Act, 1894, s. 2 (7).

(l) Home Counties (Music and Dancing) Licensing Act, 1920, s. 3 (9); 19 Halsbury's Statutes 864; Surrey County Council Act, 1931 (21 & 22 Geo. 5, c. cl.), s. 37 (9). In Surrey this provision does not apply where an occasional licence is granted, see *ante*, pp. 314, 316.

(m) 9 Halsbury's Statutes 1019.

(n) Public Entertainments Act, 1875, s. 1; 4 Halsbury's Statutes 681, and Music and Dancing Licences (Middlesex) Act, 1894, s. 2 (7); 19 Halsbury's Statutes 850. These sections must be read in conjunction with the Licensing (Consolidation) Act, 1910, ss. 57, 112 (3); 9 Halsbury's Statutes 1019, 1043. See also Home Counties (Music and Dancing) Licensing Act, 1920, s. 3 (9); 19 Halsbury's Statutes

of London, there is a statutory requirement that the observance of the days and hours of opening must be inserted in and made a condition of every licence (o). [672]

**Conditions Imposed by Licensing Authority.**—In addition to the foregoing conditions which are expressly required or authorised by the Acts, the licensing authority may impose such terms, conditions and restrictions in granting licences as they may determine (p).

During the currency of a licence, it would not appear to be open to a licensing authority to vary the conditions of a licence granted by them, except in the administrative county of London where the L.C.C. are expressly empowered on the application of the licensee to modify or waive any terms, conditions or restrictions attaching to an existing licence or to attach new or substituted terms, conditions or restrictions which will be as binding and enforceable as if they had been attached to the licence at the time when it was granted (q). [673]

Although there is no appeal from conditions imposed by the licensing authority, conditions may be open to objection on the ground that in imposing them the authority have not properly exercised their discretion, or that the conditions are unreasonable and *ultra vires*, and in such cases the remedy is by way of *mandamus* or prohibition as the case may be. A *mandamus* has been granted when justices had before them a number of applications for music and dancing licences and granted them all subject to the condition that children under fourteen should not attend performances after 7 p.m. without a guardian or after 9 p.m. at all, it being held that the justices should have heard each application separately (r). A prohibition was also granted on the ground that the conditions were unreasonable and *ultra vires* (r).

A condition that a charge of at least 3d. per head should be made for admission to a hall associated with a public house and that such

364, and Surrey County Council Act, 1931 (21 & 22 Geo. 5, c. ci.), s. 37 (9). S. 57 of the Licensing (Consolidation) Act, 1910 (9 Halsbury's Statutes 1019), authorises the local authority within the meaning of the Act to grant to a holder of a justice's licence for the sale of intoxicating liquor a special order of exemption exempting him from the provisions of the Act relating to general closing hours, on any special occasions.

(o) P.H.A. Amendment Act, 1890, s. 51 (8); 13 Halsbury's Statutes 844; Music and Dancing Licences (Middlesex) Act, 1894, s. 2 (8); 19 Halsbury's Statutes 350; Home Counties (Music and Dancing) Licensing Act, 1926, s. 3 (10); 19 Halsbury's Statutes 805; Surrey County Council Act, 1931 (21 & 22 Geo. 5, c. ci.), s. 37 (10). In Surrey this requirement does not apply in the case of occasional licences. See *ante*, p. 314.

(p) L.C.C. (General Powers) Act, 1915, s. 14 (1); 19 Halsbury's Statutes 356; P.H.A. Amendment Act, 1890, s. 51 (2); 13 Halsbury's Statutes 845; Music and Dancing Licences (Middlesex) Act, 1894, s. 2 (2); 19 Halsbury's Statutes 349; Home Counties (Music and Dancing) Licensing Act, 1926, s. 3 (2); 19 Halsbury's Statutes 803; Surrey County Council Act, 1931 (21 & 22 Geo. 5, c. ci.), s. 37 (1).

(q) L.C.C. (General Powers) Act, 1923, s. 16; 19 Halsbury's Statutes 357.

(r) *R. v. Aberdare J.J.* (1917), 81 J. P. Jo. 224. See also cases on cinematograph licensing such as *Theatre de Luxe (Hafizae), Ltd. v. Gledhill*, [1915] 2 K. B. 49; 42 Digest 920, 160; *R. v. L.C.C., Ex parte London and Provincial Electric Theatres, Ltd.*, [1915] 2 K. B. 466; 42 Digest 920, 154; *Ex parte Stott*, [1916] 1 K. B. 7; 42 Digest 921, 167; *R. v. Burnley J.J., Ex parte Longmore* (1916), 85 L. J. (K. B.) 1565; 42 Digest 921, 161; *Ellis v. Dubowski*, [1921] 3 K. B. 621; 42 Digest 921, 162; *Mills v. L.C.C.*, [1925] 1 K. B. 213; 42 Digest 922, 171. Also the cases as to theatre licensing, *R. v. West Riding of Yorkshire County Council*, [1896] 2 Q. B. 386; 42 Digest 904, 10; *R. v. Sheerness U.D.C.* (1898), 14 T. L. R. 533; 42 Digest 904, 12; *Manchester Palace of Varieties, Ltd. v. Manchester Corpn.* (1898), 62 J. P. 425; 42 Digest 904, 11.

amount should not be returned in the form of refreshment has been held to be valid (s).

It would seem that if the licensing authority by means of a condition delegated their discretion in any matter appertaining to the proper exercise of their powers under the Act to some other body or person, except as expressly authorised by statute, the condition would be *ultra vires* (t).

It would also appear that the licensing authority have power to impose conditions in the form of undertakings given by the licensee provided that they are of a reasonable character (u).

Where a licensee has accepted a licence subject to invalid conditions the position is not free from doubt. On the one hand the view has been expressed that he can legitimately take advantage of the fact that the condition does not bind him (a), and on the other that once having accepted a licence in such circumstances, if he commits a breach of the condition, he is liable to the penalties imposed by statute (b).

[674]

In imposing conditions, it is usual for the licensing authority to make requirements with regard to the site, structure, internal arrangement and management of the premises and to the provision of adequate measures to prevent and extinguish fire. In the administrative county of London where any house, room or other place of public resort of not less than 500 square feet is authorised under a licence to be kept open for dancing, music, or other public entertainment of the like kind, the L.C.C. are expressly empowered by notice in writing to require the person keeping the premises for such purpose to comply with any requirement as to the times of opening and closing the exits, the nature of the fastenings on and the notices relating to the exits (c).

In this connection the H.O. has issued a manual which is a useful guide to licensing authorities and contains advice and model requirements and conditions with regard to the safety requirements in theatres and other places of public entertainment. The model conditions and requirements cover a wide range, including the situation of premises, exits, gangways, stairways, floor coverings, hangings, fire extinguishment, electrical installation and emergency signalling, and are based on the investigation of various fire disasters (d). [675]

**Regulations.**—In the Home Counties area (see *ante*, p. 307) and in the administrative county of Surrey, the licensing authority may, if they think fit, make regulations prescribing generally the terms, conditions and restrictions subject to which the licences are to be granted, and where any such regulations are in force every licensee is

(s) *Ex parte Richards* (1904), 68 J. P. 530; 42 Digest 920, 163.

(t) *Ellis v. Dubowski*, *supra*, note (r).

(u) *R. v. Burnley J.J.*, *Ex parte Longmore*, *supra*, note (r).

(a) *Theatre de Luce (Holford), Ltd. v. Gledhill*, *supra*, note (r), per LUSH, J., at p. 54; *Ellis v. Dubowski*, *supra*, note (r), per SANKER, J., at p. 627.

(b) *Ellis v. Dubowski*, *supra*, note (r), per AVORY, J., at p. 626.

(c) Metropolitan Board of Works (Various Powers) Act, 1882, s. 45; 19 Halsbury's Statutes 347. See also s. 11 of the Metropolis Management and Building Acts Amendment Act, 1878; 19 Halsbury's Statutes 342, for a power to require structural alterations, with the consent of the Home Secretary, in premises which were open in 1878 to prevent danger from fire.

(d) Manual of Safety Requirements in Theatres and other places of public entertainment, issued by the H.O., 1934. Price 2s. 6d. net. See also title SAFETY PROVISIONS OF BUILDINGS AND STANDS. As to provision of safety of children at entertainments, see Children and Young Persons Act, 1933, s. 12 (26 Halsbury's Statutes 178); and title EMPLOYMENT OF CHILDREN AND YOUNG PERSONS.

(without prejudice to the power of the council to grant a licence on and subject to any special conditions or restrictions) to be deemed to be granted subject to such regulations (*e*).

In the administrative county of London, the L.C.C. may make regulations with respect to the requirements for the protection from fire of houses, rooms or other places of public resort having a superficial area for the accommodation of the public of not less than 500 feet and to be kept open for public dancing, music or other public entertainment of the like kind, under licences granted for the first time after the passing of the Metropolis Management and Building Acts Amendment Act, 1878 (*f*). The regulations may contain requirements as to the position and structure of such premises for the purpose of protecting the public frequenting them from fire which may arise therein or in the neighbourhood (*g*). The council may alter or amend the regulations and in any special case modify or dispense with them, or annex conditions if they consider it expedient (*h*). Where regulations are made it is not lawful for any person to have or keep open any of the premises mentioned for any such purposes without a certificate granted by the council to the effect that the premises on completion were in accordance with the council's regulations and with any conditions imposed by the council (*h*).

In other licensing areas, there is no statutory power to make regulations, but there would appear to be no objection to such regulations being made, provided they are expressly incorporated as conditions in each licence granted by the licensing authority and that in so deciding the case on its merits has been considered. [676]

**Fees.**—In areas to which Part IV. of the P.H.A. Amendment Act, 1890, applies, and in the county of Middlesex, a registration fee of 5s. must be paid on every application for a licence (*i*), but in Middlesex no fee is payable where the licence is granted for the purpose of a charitable or other like entertainment (*k*).

In the Home Counties area (see *ante*, p. 307) and, where the licence applied for is not an occasional licence, in the administrative counties of London and Surrey there must be paid, on application for the grant of a licence, such fee not exceeding £1 as the licensing authority may

(*e*) Home Counties (Music and Dancing) Licensing Act, 1926, s. 3 (3); 19 Halsbury's Statutes 363; Surrey County Council Act, 1931 (21 & 22 Geo. 5, c. cl.), s. 44. In Surrey the regulations may also relate to the transfer of licences. In both areas, *prima facie* evidence of any such regulations may be given in legal proceedings by the production of a copy purporting to be certified as a true copy by the clerk or some other officer of the licensing authority authorised for the purpose and no proof can be required of the handwriting or official position or authority of the person giving such certificate.

(*f*) 19 Halsbury's Statutes 341.

(*g*) Metropolis Management and Building Acts Amendment Act, 1878, s. 12; 19 Halsbury's Statutes 343. Infringement of the regulations involves a penalty not exceeding £50 for every day on which the premises are kept open in contravention, but the section does not apply where a licence for occasional use is granted by the council (see s. 56 of L.C.C. (General Powers) Act, 1935; 28 Halsbury's Statutes 153), unless the council otherwise determine.

(*h*) *Ibid.* S. 12 applies to premises where no licence has been obtained under the Disorderly Houses Act, 1751, see *R. v. Hannay*, [1891] 2 Q. B. 700; 42 Digest 922, 176, but has no application to buildings other than those which were erected or came into existence after the passing of the Act, see *L.C.C. v. Hall of Arts and Science Corp.* (1913), 110 L. T. 28; 42 Digest 922, 178.

(*i*) P.H.A. Amendment Act, 1890, s. 51 (1); 13 Halsbury's Statutes 343; Music and Dancing Licences (Middlesex) Act, 1894, s. 2 (1); 19 Halsbury's Statutes 349.

(*k*) Music and Dancing Licences (Middlesex) Act, 1894, s. 2 (1); 19 Halsbury's Statutes 349.

determine (l); on the transfer of a licence a fee not exceeding 5s. is payable (l). In London and Surrey, the fee for an occasional licence must not exceed 10s. (m). [677]

**Penalties.**—In the administrative county of London, a person keeping or rated as occupier of any premises kept or used for public dancing, singing, music or any other public entertainment of the like kind without a licence is liable on summary conviction to a penalty not exceeding £100, and in the case of a continuing offence to a further penalty of not exceeding £50 for every day on which such premises are so kept or used after conviction (n).

In the administrative county of Middlesex and in areas to which Part IV. of the P.H.A. Amendment Act, 1890, applies, the person occupying or rated as occupier of premises kept without a licence for such purposes is liable to a penalty not exceeding £5 for every day on which the premises are so kept or used (o), and in the Home Counties area (see *ante*, p. 307) the person keeping any place for such purposes without a licence, and, unless he proves to the satisfaction of the court that the place was so kept without his consent or connivance, the person occupying, or rated as occupier of such place, is liable to a similar penalty (p). [678]

In the administrative county of Surrey every occupier of any premises who uses or allows them to be used for such purposes without a licence is liable to a penalty not exceeding £50 and to a daily penalty not exceeding £5 (g).

In the administrative county of London premises kept for public dancing, music and other like public entertainment without a licence are deemed a disorderly house (r), and the position is the same in the case of premises so kept or used in the administrative counties of Middlesex and Surrey and in the areas to which Part IV. of the P.H.A. Amendment Act, 1890, applies (s). The keeping of a disorderly house is a nuisance at common law (t), and the fact that there was no disorderly conduct affords no defence (u).

In the administrative county of London and in the Home Counties

(l) L.C.C. (General Powers) Act, 1936, s. 37; 29 Halsbury's Statutes 282; Home Counties (Music and Dancing) Licensing Act, 1926, s. 3 (5); 19 Halsbury's Statutes 364; Surrey County Council Act, 1931 (21 & 22 Geo. 5, c. ci.), s. 37 (6). In the Home Counties area and Surrey, where the licence is for the sole purpose of a charitable entertainment, a fee not exceeding 5s. is payable. In Surrey and London such fee is also payable in respect of the renewal of a licence, although it would seem that each renewal in fact would amount to the grant of a fresh licence.

(m) L.C.C. (General Powers) Act, 1936, s. 37; 29 Halsbury's Statutes 282. An occasional licence for the purpose of the section is a licence for the use of any premises on one particular occasion or on two or more particular occasions within a period not exceeding a month. In Surrey, if the occasional licence is solely for charitable or other like purposes a fee not exceeding 5s. is payable; Surrey County Council Act, 1931 (21 & 22 Geo. 5, c. ci.), s. 35 (2).

(n) L.C.C. (General Powers) Act, 1915, s. 16 (1); 19 Halsbury's Statutes 366.

(o) Music and Dancing Licences (Middlesex) Act, 1894, s. 2 (5); 19 Halsbury's Statutes 350; P.H.A. Amendment Act, 1890, s. 51 (5); 13 Halsbury's Statutes 844.

(p) Home Counties (Music and Dancing) Licensing Act, 1926, s. 3 (7); 19 Halsbury's Statutes 364.

(q) Surrey County Council Act, 1931 (21 & 22 Geo. 5, c. ci.), s. 46.

(r) Disorderly Houses Act, 1751, s. 2; 4 Halsbury's Statutes 360.

(s) Music and Dancing Licences (Middlesex) Act, 1894, s. 2 (5); 19 Halsbury's Statutes 350; Surrey County Council Act, 1931 (21 & 22 Geo. 5, c. ci.), s. 37 (7); P.H.A. Amendment Act, 1890, s. 51 (5); 13 Halsbury's Statutes 844.

(t) *R. v. Higginson* (1762), 2 Burr. 1232; 15 Digest 754, 8129.

(u) *R. v. Wolfe* (1849), 13 J. P. 428; 15 Digest 758, 8153.

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area (see *ante*, p. 307), any persons appearing, acting or behaving as masters of or as having the care or management of premises are to be deemed to be the keepers thereof and are liable to prosecution and punishment notwithstanding that they are not in fact the real owners or keepers (*a*). [679]

Breach of any of the terms and conditions subject to which a licence has been granted or transferred in the administrative counties of London and Middlesex and in the Home Counties area (see *ante*, p. 307), renders the holder of a licence liable to a penalty not exceeding £20 and to a daily penalty of £5 for each day on which contravention continues after conviction therefor, and in Middlesex and the Home Counties area (see *ante*, p. 307) the licence of any person so convicted may be revoked by the licensing authority (*b*).

In the administrative county of Surrey, a person using or allowing premises to be used in contravention of the Surrey County Council Act, 1931, or of the terms, conditions and restrictions of a licence is liable to a penalty not exceeding £20 and to a daily penalty of £5 (*c*), and the county council may revoke the licence where the holder has been so convicted (*d*).

Similar penalties may also be incurred by the holder of a licence in the areas to which Part IV. of the P.H.A. Amendment Act, 1890, applies, and his licence may be revoked by order of a court of summary jurisdiction (*e*). [680]

**Right of Entry.**—In the administrative counties of London and Middlesex it is lawful for any constable or other person authorised by warrant of a justice of the peace to enter premises kept or used without a licence, and to apprehend every person who is found therein in order that they may be dealt with according to law (*f*). In the Home Counties area (see *ante*, p. 307) and in the administrative county of Surrey any constable so authorised by a warrant granted by a justice of the peace may enter any place in respect of which he has reason to suspect that an offence is being committed (*g*). [681]

(*a*) Disorderly Houses Act, 1751, s. 8; 4 Halsbury's Statutes 363; The Home Counties (Music and Dancing) Licensing Act, 1926, s. 3 (13); 19 Halsbury's Statutes 365. See also *Reid v. Wilson*, [1895] 1 Q. B. 315; 15 Digest 759, 8177.

(*b*) L.C.C. (General Powers) Act, 1915, s. 10 (2); 19 Halsbury's Statutes 357; Music and Dancing Licences (Middlesex) Act, 1894, s. 2 (9); 19 Halsbury's Statutes 350; Home Counties (Music and Dancing) Licensing Act, 1926, s. 3 (11); 19 Halsbury's Statutes 365.

(*c*) Surrey County Council Act, 1931 (21 & 22 Geo. 5, c. ci.), s. 46.

(*d*) *Ibid.*, s. 45.

(*e*) Act of 1890, s. 51 (9); 13 Halsbury's Statutes 845.

(*f*) Disorderly Houses Act, 1751, s. 2; 4 Halsbury's Statutes 360; Music and Dancing Licences (Middlesex) Act, 1894, s. 2 (5); 19 Halsbury's Statutes 350. As to the power of the L.C.C. to authorise an architect or any other person to inspect the arrangements for protection against fire in premises kept open for public entertainment, see s. 21 of the Metropolis Management and Building Acts Amendment Act, 1878; 19 Halsbury's Statutes 345.

(*g*) Home Counties (Music and Dancing) Licensing Act, 1926, s. 3 (12); 19 Halsbury's Statutes 365; Surrey County Council Act, 1931 (21 & 22 Geo. 5, c. ci.), s. 43 (2). In Surrey this provision also applies to any person appointed for the purpose by the county council provided he has obtained a justice's warrant. In Surrey, a police constable or any person appointed for the purpose by the county council may at all reasonable times enter any licensed premises in which he has reason to believe that a music or dancing entertainment is being or is about to be given with a view to seeing whether the provisions of the Act and the terms, conditions and restrictions contained in the licence are complied with (*ibid.*, s. 43 (1)). Any person who refuses to permit any such constable to enter or inspect the premises is liable to a penalty not exceeding £20 (*ibid.*, s. 43 (3)).

**Exemptions.**—In the county of London, no licence is required in the case of the Theatres Royal in Drury Lane and Covent Garden or "the theatre commonly called the King's Theatre in the Haymarket," nor to such performances and public entertainments as are or shall be lawfully exercised and carried on under letters patent or licence of the Crown or of the Lord Chamberlain (*h*).

In the Home Counties area (see *ante*, p. 807), no licence is required in respect of any entertainment provided by a local authority in a park, garden or other place in the control of such authority nor in any building thereon (*i*).

The statutes relating to the control of public dancing, singing or music entertainments do not apply to the use by the authority of a Secretary of State (*k*) or the Admiralty, of any building at a camp, station or naval establishment, or of any ship, for entertainments or amusements under the direction and control of an officer (*k*) or committee having official responsibility for such matters (*l*). [682]

(*h*) Disorderly Houses Act, 1751, s. 4; 4 Halsbury's Statutes 361. See *Gallini v. Laborie* (1793), 5 Term Rep. 242; 42 Digest 911, 73; *R. v. Handy* (1795), 6 Term Rep. 286; 42 Digest 918, 133.

(*i*) Home Counties (Music and Dancing) Licensing Act, 1926, s. 5; 19 Halsbury's Statutes 365. As to user of public parks or pleasure grounds by local authorities for entertainments, see P.H.A. Amendment Act, 1907, s. 76 (*i*); 13 Halsbury's Statutes 939, and P.H.A., 1925, s. 56; 13 Halsbury's Statutes 1139.

(*k*) For definition of "Secretary of State" and "officer," see Army Act, 1881, s. 190 (*i*), (*4*); 17 Halsbury's Statutes 241.

(*l*) *Ibid.*, s. 174A, inserted in the Army Act and the Air Force Act by Army and Air Force (Annual) Act, 1932, s. 7; 25 Halsbury's Statutes 611.

## MUSK RATS

In 1932 and 1933 musk rats were found in large quantities in the Rivers Severn, Arun and Wey in Shropshire, Sussex and Surrey respectively. They were causing much damage and were rapidly increasing in numbers. The musk rat is not a rat, despite its name, and no action can be taken against it under the Rats and Mice (Destruction) Act, 1919 (*a*). Extensive powers of dealing with musk rats were therefore granted by the Destructive Imported Animals Act, 1932 (*b*). A vigorous use of these powers has resulted in the complete control of the pest. By sect. 10 of the Act of 1932 the Minister of Agriculture and Fisheries and the Secretary of State for Scotland may, in effect, apply the Act to any other non-indigenous mammalian species. The powers, therefore, of the Act may still be exercised as regards other pests, and control of the importation and keeping of musk rats is still exercised. [683]

By sect. 1 the Minister and Secretary of State acting jointly may by order prohibit absolutely, or except under licence, either the importation into Great Britain or the keeping in Great Britain of musk rats. A special revocable licence may be granted for the keeping of musk rats for exhibition or for scientific purposes (sect. 8). While an order

(*a*) 13 Halsbury's Statutes 903.

(*b*) 25 Halsbury's Statutes 53.

under sect. 1 is in force, (i.) officers of the appropriate department may enter and inspect any land where they think musk rats may be (sect. 4), (ii.) occupiers of any land knowing of the presence there of unlicensed musk rats must give notice to the appropriate department (sect. 5 (2)), (iii.) the appropriate department may take any steps they consider necessary to destroy unlicensed musk rats, and it is the duty of the occupier to co-operate therein (sect. 5 (3)). [684]

The authorities for execution of the powers of the Act are the Minister and the Secretary of State. By sect. 5 (4) the Minister may authorise the agricultural committee of the council of any county in England to exercise within the county, on behalf of the department, the powers of the department under sect. 5 (3).

The expenses of the Minister are to be defrayed out of moneys provided by Parliament. If any delegation under sect. 5 (4) (*supra*) takes place the agricultural committee are to exercise the delegated powers at the expense of the Minister (sect. 5 (4)). The Act confers no powers on any local authority to spend any money. [685]

## NAMING OF STREETS AND NUMBERING OF HOUSES

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### PRELIMINARY

This article will deal with the powers and practice as to the naming of streets and the numbering of houses. The powers contained in sects. 64, 65 of the Towns Improvement Clauses Act, 1847 (*a*), were incorporated with the P.H.A., 1875 (*b*), and supplemented by sect. 21 of the P.H.A. Amendment Act, 1907 (*c*). These provisions, however, so far as they affect the naming of streets cease to have effect where sects. 18, 19 of the P.H.A., 1925 (*d*), are in force (see *post*).

Before passing to a more detailed consideration of these statutory provisions, it must be emphasised that they impose a positive duty upon a borough or U.D.C. to deal adequately with the naming of streets and the numbering of houses in their area. There appears, however, to be a widespread neglect of this duty, particularly with regard to the obligation to number houses. This neglect frequently

(a) 13 Halsbury's Statutes 551.

(b) By s. 160; *ibid.*, 601.

(c) *Ibid.*, 918. In force only in a borough or district in which s. 21 has been declared to be in force by an order of the M. of H.

(d) 13 Halsbury's Statutes 1120, 1121.

leaves the public, the postal authorities and others who are entitled to be afforded assistance, without any definite guide as to the location of a house. Amongst the resulting evils, the non-delivery, late delivery and delivery at the wrong address of telegrams and postal packets may cause serious loss. This difficulty is accentuated by the fact that in rapidly developing suburbs there is a tendency for owners and occupiers to prefer that a house should be named, rather than numbered. At common law the owner of a house has a right to call it by any name he chooses, inviting the public to recognise and use that name, even though it may be the name of another house in the neighbourhood, there being no legal right to the exclusive use of a particular name (*e*). The duplication of house names is therefore frequent. It is often difficult to find a house identified only by a name, as a name gives no indication of the location of a house in a particular district or street, and this difficulty is greater where two or more houses bear similar names, particularly when there has been a change of tenants. The obligation of the local authority in this matter cannot be too strongly urged. [686]

#### NAMING OF STREETS

Under the Towns Improvement Clauses Act, 1847.—By sect. 64 of this Act (*f*), it is the duty of the local authority to cause to be put up or painted on a conspicuous part of some house, building or place at or near each end, corner or entrance of every street (*g*) the name by which such street is to be known. This does not empower the local authority to change the name of a street, and proceedings will lie to restrain the local authority from making such change if it is likely to be injurious to the owners or occupiers of the houses in the street (*h*), but additional powers as to change of name are conferred by the P.H.A. Amendment Act, 1907, and the P.H.A., 1925, where in force (see *post*). It seems that an appeal will lie to quarter sessions by a person aggrieved by the decision of the local authority to name a street (*i*). Defacement, etc., of a name renders the offender liable to a penalty not exceeding 40s. (*j*).

By sect. 160 of the P.H.A., 1875, this section is in force in boroughs and urban districts (*k*). (But see heading "Effect of P.H.A., 1925," *infra*.) Part of sect. 160 is in force also in all rural districts by the Rural Districts Councils (Urban Powers) Order, 1931 (*l*), but not so much as incorporates sect. 64 of the Act of 1847. This can, however, be put in force in any rural district or contributory place under sect. 276 of the P.H.A., 1875 (*m*), and sect. 272 of the L.G.A., 1933 (*n*). [687]

(*e*) *Day v. Brownrigg* (1878), 10 Ch. D. 294; 28 Digest 465, 399.

(*f*) 13 Halsbury's Statutes 551.

(*g*) For definition of "street," see s. 3 of the Act of 1847; 13 Halsbury's Statutes 532. The section therefore applies to private streets.

(*h*) *Anderson v. Dublin Corp'n.* (1884), 15 L. R. Ir. 410; and cf. *Collins v. Hornsey U.D.C.*, [1901] 2 K. B. 180; 26 Digest 567, 2604.

(*i*) P.H.A. Amendment Act, 1890, ss. 2 (1), 7; 13 Halsbury's Statutes 824, 826; see *R. v. Essex JJ., Ex parte Barking U.D.C.*, [1916] 2 K. B. 406; 38 Digest 224, 557. See title APPEALS TO THE COURTS.

(*j*) Act of 1847, s. 64.

(*k*) See the definition of "urban district" in ss. 5, 6 of the P.H.A., 1875; 13 Halsbury's Statutes 627.

(*l*) S.R. & O., 1931, No. 580; 24 Halsbury's Statutes 262.

(*m*) 13 Halsbury's Statutes 741.

(*n*) 26 Halsbury's Statutes 451.

*Alteration of Street Name.*—In boroughs and districts to which sect. 21 of the P.H.A. Amendment Act, 1907 (*o*), has been applied by order of the M. of H. (*p*) and sects. 17—19 of the P.H.A., 1925, are not in force, the council may alter the name of any street, or part of a street, with the consent of two-thirds in number or value of the ratepayers therein, and may cause the name to be painted or otherwise marked on a conspicuous part of any building or other erection. The right of appeal by an aggrieved person is the same as that with regard to the naming of streets (*q*). Defacement, etc., renders the offender liable to a penalty not exceeding 40s. [688]

*Effect of P.H.A., 1925.*—Sect. 64 (so far as it deals with the naming of streets) of the Towns Improvement Clauses Act, 1847, and sect. 21 of the Act of 1907, are superseded and cease to have effect where sects. 17—19 of the P.H.A., 1925 (*r*), are in force. [689]

*Naming of Street.*—Sect. 17 of the P.H.A., 1925 (*s*), deals with the naming of streets in a borough or urban district by builders and others, and provides that before any street is given a name notice of the proposed name shall be sent to the council by the person proposing to name the street, and enables the council within one month (*t*) by written notice (*u*) served on the person by whom notice of the proposed name was sent, to object to the proposed name.

The setting up in any street of an inscription of its name before the expiration of the one month allowed for an objection by the council, or where the council have objected to the name until the objection has been withdrawn or been overruled on appeal, renders the offender liable to a penalty of £5 and a daily penalty of 20s. (*w*). Forms for use under this section will be found in the *Encyclopædia of Forms and Precedents* (2nd ed.), Supplement No. 10, pp. 648—649. [690]

*Alteration of Name of Street.*—Sect. 18 of the P.H.A., 1925 (*a*), empowers a borough or U.D.C. by order (*b*) to alter the name of any street or part of a street or to assign a name to a street or part of a street to which a name has not been given. One month's notice of intention to make such order must be posted at each end of the street or part of the street or in some conspicuous position in the street or part affected. Apart from sect. 21 of the P.H.A., 1907, a local authority had no power to change the name of a street (*c*), and sect. 21 limited the power by requiring the consent of two-thirds of the ratepayers in the street. Sect. 18 of the Act of 1925 makes such a consent un-

(*o*) 18 Halsbury's Statutes 918.

(*p*) P.H.A. Amendment Act, 1907, s. 3. It is understood that the M. of H. is no longer willing to declare this section to be in force, regarding it as superseded by s. 18 of the Act of 1925, *infra*.

(*q*) See the sections and case mentioned in note (*i*), *supra*.

(*r*) Ss. 18 (5), 19 (3); 13 Halsbury's Statutes 1120. As to adoption by a borough or U.D.C., see s. 8 (13 Halsbury's Statutes 1116) and as to putting in force these sections in a rural district, see s. 4 and title *ADVERTISE ACTS*.

(*s*) 13 Halsbury's Statutes 1120.

(*t*) This means a calendar month (Interpretation Act, 1889, s. 3; 18 Halsbury's Statutes 998).

(*u*) As to notices and service of notices, see P.H.A., 1875, ss. 266, 267; 13 Halsbury's Statutes 735.

(*v*) "Daily penalty" means a penalty for each day on which the offence continues after conviction, see s. 18 of the Act of 1907 (13 Halsbury's Statutes 915) applied by s. 7 and Sched. IV. to Act of 1925; *ibid.*, 1117, 1156.

(*w*) 13 Halsbury's Statutes 1120.

(*x*) As to form of order, see P.H.A., 1875, s. 266; 13 Halsbury's Statutes 735. See also *Ency. Forms, Supp. No. 10*, 640.

(*y*) See *ante*, p. 325.

necessary, but safeguards private interests by requiring one month's notice to be given of the proposed alteration and giving a right of appeal within twenty-one days after the posting of the notice, to a petty sessional court by any person aggrieved (*d*). [691]

*Indication of Name of Street.*—Sect. 19 of the P.H.A., 1925 (*e*), requires borough or urban councils to cause the name of every street to be painted or marked in a conspicuous position on any house, etc. in or near the street and from time to time to alter or renew such inscription if and when the name is altered or the inscription becomes illegible. This provision is obligatory once the section is in force. Defacement, the setting up of any name different from the one lawfully given and the placing of any notice or advertisement within a foot of the name are prohibited under a penalty not exceeding £5 and a daily penalty of 20s. [692]

*Appeals.*—An appeal to petty sessions will lie against any objection of the council under sect. 17 to the proposed name of a street (*f*) or against an intended order under sect. 18 altering the name of a street or assigning a name to a street not already named (*g*). The procedure on any such appeal is dealt with in sect. 8 of the Act (*h*) and notice of the right of appeal must be endorsed on the notice of objection or intended order of the council (*i*). [693]

#### NUMBERING OF HOUSES

By sect. 64 of the Towns Improvement Clauses Act, 1847 (*k*), it is the duty of a borough or U.D.C. from time to time to cause the houses and buildings in all or any of the streets to be marked with numbers as they think fit. Occupiers of houses and buildings are required within one week of receiving notice from the local authority to mark their houses with such numbers as the local authority approve of (*l*) and to renew numbers becoming obliterated or defaced (*m*). A form of notice will be found in 12 Eney. Forms 590. Non-compliance renders the defaulter liable to a penalty not exceeding 40s. and payment of the expenses of the council. These sections are in force in boroughs and urban districts by incorporation with the P.H.A., 1875, and may be put in force in particular rural districts or parts thereof by order of the M. of H. under sect. 276 of that Act (*n*).

It will be noted that the words "from time to time" in sect. 64 apply only to the numbering of houses and are omitted from the sentence relating to the naming of streets (*o*), which suggests that whilst changes of street names were not contemplated by the section, changes in the numbers of the houses were foreseen. The omission to mention the

(*d*) Act of 1925, s. 18 (8), (4); 13 Halsbury's Statutes 1120, 1121.

(*e*) *Ibid.*, 1121.

(*f*) Act of 1925, s. 17 (4); *ibid.*, 1120.

(*g*) *Ibid.*, s. 18 (4).

(*h*) 13 Halsbury's Statutes 1117.

(*i*) As to the effect of omitting this endorsement, see *Rayner v. Stepney Corpn.* [1911] 2 Ch. 312; 38 Digest 212, 471.

(*k*) 13 Halsbury's Statutes 551.

(*l*) Having regard to the object of these provisions, it is submitted that the mark must be one of a permanent nature and that a number indicated in chalk would not suffice.

(*m*) Towns Improvement Clauses Act, 1847, s. 65; 13 Halsbury's Statutes 551.

(*n*) 13 Halsbury's Statutes 741, replaced from October 1, 1937, by s. 13 of the P.H.A., 1936; 29 Halsbury's Statutes 330.

(*o*) *Ante*, p. 325.

re-numbering of houses in the Act of 1907 and the P.H.A., 1925 (each of which empowers the alteration of street names) supports the view that sects. 64, 65 of the Act of 1847 allow a council to require the re-numbering of houses where necessity arises (*e.g.* by reason of the erection of additional houses in old streets or because an inconvenient system of numbering had in the past been adopted), as well as the repainting of a number which has become illegible.

The expense of marking the numbers is to be borne by the occupiers. There is no authority for charging the cost on the rates. It is submitted that to recover the cost, the council must follow the procedure prescribed by the section and first require the occupier to number or re-number the house, and on his default, mark the number and recover the expenses and penalty. Defacement, etc., of a house number renders the offender liable to a penalty of not exceeding 40s. (*p*).

An appeal appears to lie to quarter sessions by any person aggrieved by a requirement of the local authority to number or re-number a house under the above provisions (*q*). [694]

#### LONDON

For London powers, see Part IV. of the London Building Act, 1930 (*r*). See also title LONDON BUILDING at pp. 181—205 of Vol. VIII.

Provision is made for notice to be given to the L.C.C. of intention to name, and for objection by the council. The L.C.C. may by order alter names on giving notice to local authorities and occupiers. The L.C.C. may also make orders as to numbering of houses. It is the duty of the local authority (city corporation or metropolitan borough council) to perform all acts and take all proceedings for carrying such orders into execution. The local authority attend to the fixing of names on streets, and the authority may, upon fixing a number in default of the occupier of a house or building, recover the cost thereof from the owner or occupier.

The Act contains provisions as to offences, *e.g.* defacing names of streets or numbers of houses, and unauthorised naming, or failing to number correctly. The relevant provisions do not extend to the City or to the metropolitan borough of Hackney, the City corporation and the Hackney borough council having analogous powers under special Acts. The county council are required to keep a register of all alterations made by them in the names of streets and numbers of houses, and such register may be inspected and a copy of any portion taken on payment. [695]

As far as possible endeavour is made to arrange that the numbers shall radiate outwards from St. Paul's cathedral, except that if a street leads from a main thoroughfare to a less important street, the numbers must begin from the main thoroughfare. Odd numbers are usually put on the left (facing away from St. Paul's), even numbers on the right.

Certificates of alterations of numbers are issued on payment.

The council's regulations provide against duplication of the names of new streets. The council in practice consults the local authority in new naming.

(*p*) Act of 1847, s. 64.

(*q*) See the sections and case mentioned in note (*i*), *ante*, p. 325.

(*r*) Ss. 33—41; 23 Halsbury's Statutes 234—236.

"Road" is only given to thoroughfares of sufficient length and importance, "avenue" and "grove" conditional upon the planting of trees, and "gardens," "crescent," etc., only in suitable cases.

One word in addition to "road" or "street" is favoured and names having some association with the locality and neighbourhood. [696]

## NATIONAL ASSOCIATION OF LOCAL GOVERNMENT OFFICERS

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**Introduction.**—The National Association of Local Government Officers, commonly known as N.A.L.G.O. (a), was founded in 1905 by representatives of a few municipal guilds with a membership of about 8,000. At the end of 1936 membership had increased more than tenfold (93,338), and the Association claims to be "the only organisation representing all grades of the official staffs of local authorities in Great Britain."

In the appointment and remuneration of staff and in the determination of conditions of service the individual local authority enjoys a large measure of autonomy (see titles OFFICERS OF LOCAL AUTHORITIES and STAFF). The numerical strength and national character of the Association therefore assume a peculiar degree of importance by providing a platform for the discussion of matters of national rather than local significance. With this fact in mind it must be considered fortunate that N.A.L.G.O. has accepted a dual responsibility—the protection of the interests of its members and the maintenance of a high sense of responsibility to the public who employ them. [697]

**Organisation. Branch.**—The autonomy of the local authority determines to some extent the form of organisation. The normal course is for a branch to consist of the staff of one authority. In the case of small authorities, staffs may combine to form a branch whilst the small and scattered staffs of non-contiguous authorities are provided for by "district" branches.

Branches act through executive committees, elected in accordance with rules approved by the central organ of the Association and appoint officers. These consist of chairman, secretary, treasurer and correspondents in connection with the Association's special activities.

Negotiations with the employing authority are normally conducted by the branch, who may also have the services of divisional secretaries or headquarters staff. The total number of branches in 1936 was 606 and in 100 cases joint committees had been formed with representatives of authorities for the discussion of salary and service conditions. [698]

(a) Offices : 24 Abingdon Street, S.W.1.



*District.*—Rule 50 of the constitution of the Association provides that “for the purpose of carrying on the work and the general activities of the Association, Great Britain shall be divided into twelve areas to be governed by district committees.”

Each branch is entitled to representation on a district committee in proportion to the number of branch members, and the committee must meet at least three times in each year.

The areas for which the committee are elected are of constitutional importance as they serve also as electoral divisions in the election of the council of the Association. Each district must be represented thereon and has an additional representative for every 2,500 branch members in the area.

The nature of the work performed by these committees may be gathered from an extract from the constitution and rules of the metropolitan district committee:

- (a) To further in every possible way the policy of the Association.
- (b) To assist in and encourage the formation and development of branches within the area of the district.
- (c) To stimulate and foster support to approved and provident societies, benevolent and orphan fund and any other approved project of the Association.

Valuable work has been done by district committees in connection with sports and recreations and in the development of Whitley Committees, whilst in recent years the growing concern of the Association as to the educational standards of its members has found expression in the establishment of area education sub-committees, particularly with a view to making and maintaining contact with the universities.

[698]

*Conference and Council.*—The constitution of the Association provides that “the general policy of the Association shall be directed by a conference.” Save in exceptional circumstances a conference is held annually and consists of the council and honorary officers, together with representatives of (i.) district committees (two for each such committee); (ii.) branches (proportional to the number of members—maximum 15); (iii.) sectional and professional organisations (numbers according to a special scale).

The committee of the Association is elected annually and is vested with full executive powers, subject to their exercise being consistent with the rules and general policy laid down by conference, which often emphasises its position as the “constituent assembly” of the Association.

In addition to members elected as described under the heading “District,” certain honorary officers are also members of the council. These consist of president, vice-president, treasurer and solicitors, and are elected annually by the branches on the nomination of the council or district committees. [700]

*Activities. Principal Functions.*—(a) The organisation of the professional, technical, administrative and clerical employees in all departments of the service.

(b) The improvement of the conditions and the protection of the interests of the Association's members, the establishment of super-annuation schemes being notable in this connection.

(c) The regulation of relations between members and between members and the employing authority.

(d) The initiation of, and assistance to movements for the betterment of service conditions—salary scales, hours of labour, etc.

(e) The provision of active support to members who appeal to the council individually or collectively (b).

(f) The provision of facilities for the Legislature, Government departments, and others, to ascertain the views of persons engaged or interested in local government, and for co-operation with central and local authorities on matters affecting local government and officials.

(g) Consideration of Bills introduced into Parliament and of all questions raised by that or any other public body which affect the principles of local government or the interests of officials; petitioning Parliament, promoting deputations and offering evidence in those connections.

(h) The introduction of Parliamentary or other measures which may from time to time be considered advisable in the interests of local government officers.

(i) The diffusion of information on matters affecting local government and officers and the development of a "public relations" policy.

Excellent work was done in this connection in the organisation of centenary celebrations to commemorate the passing of the Municipal Corporations Act, 1835. [701]

*Ancillary Activities.*—The activities of the Association extend beyond the official life of its members and include:

(a) A wide and extending range of educational facilities, particularly: (i.) an examination and scholarships scheme; (ii.) annual English and Scottish summer schools; (iii.) the provision of postal tuition through the agency of the N.A.L.G.O. Correspondence Institute; (iv.) co-operation with universities in the provision of degree and diploma courses relating to administration.

(b) The promotion of the physical and social welfare of members by the organisation of sports and recreational competitions.

Thus the metropolitan district committee has an entertainments and a sports and recreations sub-committee, the latter operating through seventeen sections. The Association has also established holiday camps for its members.

(c) The establishment of schemes of an economic character, with a view to financial assistance in cases of sickness and loss and as an encouragement to thrift.

In this connection may be quoted the following ancillary institutions: (i.) The N.A.L.G.O. Approved Society; (ii.) The Provident Fund; (iii.) The National and Local Government Officers' Mutual Insurance Association, Ltd.; (iv.) The N.A.L.G.O. Building Society.

Each of these institutions is numerically well supported and has a strong financial position.

(d) The assistance of necessitous members or their dependents, and of widows and children of deceased members.

Under the auspices of the Benevolent and Orphan Fund, grants have been made during the last four years at an average figure in excess of £10,000. [702]

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(b) This group of functions (a) to (e) regards the member as primarily an "employee" rather than as specifically a public servant, whilst in the remaining activities in this group the emphasis is reversed.

## NATIONAL HEALTH AND UNEMPLOYMENT INSURANCE

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### INTRODUCTION

The law relating to this subject is now consolidated in the following statutes :

- (1) The Unemployment Insurance Acts, 1935 and 1936 (a).
- (2) The National Health Insurance Act, 1936 (b).
- (3) The Widows', Orphans' and Old Age Contributory Pensions Act, 1936 (c).

Local authorities are affected by these statutes, both as employers of labour and as authorities for the provision of social services, sometimes complementary to and sometimes in temporary substitution for those provided by the Central Government.

These aspects have been distinguished in the following pages.

Employees of a local authority usually have a certain security of tenure and, in addition, frequently enjoy rights in statutory superannuation funds.

These facts are recognised in the provision for the issue by the Ministers of Health and Labour of certificates exempting the local authority and its employees wholly or partly from the operation of the Acts. This is perhaps the most important difference in the position of the local authority as employer as compared with that of the private individual. There is a considerable financial inducement for authorities

(a) 28 Halsbury's Statutes 490 ; and 20 Halsbury's Statutes 1034.

(b) 29 Halsbury's Statutes 1064.

(c) 29 Halsbury's Statutes 1198.

to apply for such certificates, as the annual contributions payable in respect of an adult male employee are :

	£	s.	d.
Unemployment Insurance	-	-	1 19 0
Health Insurance	-	-	19 6
Pensions Insurance	-	-	1 3 10
	4	2	4

The possible saving from this source is a factor that should be borne in mind when the adoption of the Local Government and other Officers' Superannuation Act, 1922, is under consideration. [703]

#### THE LOCAL AUTHORITY AS EMPLOYER

**Unemployment Insurance. Insurability.**—The effect of sect. 1 of the Unemployment Insurance Act, 1935 (*d*), together with the three parts of the First Schedule (*e*) and the Unemployment Insurance (Agriculture) Act, 1936 (*f*), is to bring within the category of insurable employment all persons under the age of sixty-five and above the age for compulsory school attendance, who are employed under any contract of service or apprenticeship (provided that in the latter case payment for services is made) and who do not fall within certain categories of exceptions. Part I. of the First Schedule (*e*) specifically includes as insurable employment that under any public or local authority. The categories of exception which are relevant for the purposes of this title are as follows : (1) Domestic—unless it is employment in an undertaking carried on for gain. (2) Nurses. (3) A permanent member of a police force. (4) A teacher entitled to superannuation rights. (5) In a non-manual capacity where earnings exceed £250 per annum. (6) Where employment is of a casual nature. (7) Where employment is specified in regulations made by the Minister of Health relating to subordinate employment. (8) Where employment is covered by a certificate of exception issued by the Minister of Health.

It is necessary to discuss certain of these points in greater detail, although exact definition is not possible. No published decisions have been issued as in the case of National Health Insurance, and individually doubtful cases should be submitted for the decision, in the first instance, of local inspectors of the Minister of Health.

By the Unemployment Insurance (Employment under Public or Local Authorities and Temporary Police Employment) (Exclusion) Regulations, 1936 (S.R. & O., 1936, No. 337) the following are excluded from employments within the meaning of the Act : chaplains or other ministers, medical practitioners, unpaid officers, unpaid apprentices, persons employed otherwise than as officers or servants of an authority, not being in employment specified in paras. 1 and 2 of Part I. of the First Schedule to the Act, coroners, deputy coroners, public analysts, public vaccinators, and registrars of births, deaths and marriages.

If an employee is engaged partly in insurable occupation and partly in an occupation not insurable, he will be regarded as insurable only if his substantial employment is in the former category. "It

(*d*) 28 Halsbury's Statutes 508.

(*e*) *Ibid.*, 570.

(*f*) 29 Halsbury's Statutes 1034.

has been held by Mr. Justice Roche in the High Court that one-third is a substantial part of an employee's working hours" (g). [704]

*Domestic.*—In several cases heard together and reported at p. 153 of the *Law Times* newspaper for January 21, 1922, it was held by ROCHE, J., that school cleaners (*Re Watts*) and caretakers (*Re Riggs*) fall within the definition "domestic." Others to whom the same applies are bath attendants unless the major part of their time is concerned with the issue of tickets or performance of clerical duties; attendants in public washhouses and conveniences; employees in laundries ancillary to public institutions; and chauffeurs. [705]

*Teachers.*—In this connection the position of supplementary teachers not having rights under the Teachers Superannuation Acts should be particularly noted. They are normally insurable unless excepted under a certificate of exception.

*Non-Manual Workers.*—Difficult cases of definition occur in this connection. Thus district foremen in charge of highways work are normally held to be non-manual employees on the ground that their work is principally of a supervisory character, whilst depot store keepers are regarded as engaged in manual occupation. [706]

*Casual Employment.*—In this connection it is necessary to scrutinise closely the true nature of the employment of such persons as library commissioners employed on certain evenings, e.g. Saturdays only.

The Unemployment Insurance Act, 1935 (h), gives power to the Minister of Health to add to the excepted categories in respect of "inconsiderable employments." In this connection he has issued the Unemployment Insurance Inconsiderable Employments Regulations, 1935 (i), which define employment in clearing snow as an excepted occupation if the person is not employed by one employer for more than four days. This is, of course, a regulation affecting local authorities.

By sect. 3 (4) of the Act (k), work provided by a local authority by arrangement with a poor law authority is not insurable if a contribution towards remuneration is made by the poor law authority. [707]

*Certificates of Exception.*—These certificates are issued to local authorities whose employees have rights in a statutory superannuation fund. The certificate will not be issued unless the employees covered by it have three years' contributory service, and enjoy a certain security of tenure, and other circumstances make it in the opinion of the Minister unnecessary that such employees should be insured against the risk of unemployment. In any occupational category covering more than four employees the local authority are required to maintain in insured employment 20 per cent. of such employees. Where an employee transfers from the service of one authority to another his superannuable service may be aggregated in order to comply with the requirement of the Ministry as to three years' superannuable service, whilst an employee who has been covered by a certificate of exception with one authority may be included in the certificate of the authority to whom he transfers, provided that the 20 per cent. margin is maintained.

If a local authority who intend to adopt the Local Government and other Officers' Superannuation Act, 1922, contemplate application for

(g) Joint Memo. of Ministries of Health and Labour—Memo. 317/X, September, 1929, entitled "Memorandum as to employees of medical and dental practitioners."

(h) S. 3 (3); 28 Halsbury's Statutes 504.

(i) S.R. & O., No. 1359, 1935.

(k) 28 Halsbury's Statutes 505.

a certificate of exception, such application should be made some time before the actual date of adoption of the Act, since time may clapse between application for and issue of a certificate.

It is important to notice that sect. 4 (2) (i) provides that insurable employment is to be defined by reference to work done by an employee, and not by reference to the business of the employer.

Sub-sect. 1 of the same section authorises the Minister to determine whether or not an individual is or was an employed person, and whether a particular class of employment is or will be insurable. Appeal rights against the Minister's decision are contained in sect. 84 (m). [708]

A distinction must be drawn between "excepted" and "exempted" employees. A certificate exempting an employee from liability for insurance under the Act may be granted by the Minister if a person is :

- (a) in receipt of income exceeding £26 per annum not derived from personal exertions ;
- (b) ordinarily dependent on some other person ;
- (c) normally dependent on earnings from a non-insurable employment ;
- (d) engaged in a seasonal occupation for a period which does not usually exceed eighteen weeks in the year and has no other usual insurable employment.

Cases of this nature occur in connection with local government employment, particularly in connection with (a) and (d) above. It is important to note that contributions in respect of exempt persons are payable by employers.

Sect. 161 of the National Health Insurance Act, 1936 (n), gives power to the Minister of Health to determine questions as to the insurability of persons or classes of employment. Sect. 5 (4) of the Unemployment Insurance Act, 1935 (o), extends these powers to questions relating to employment within the meaning of that Act. [709]

*Contributions.*—Matters relating to contributions are dealt with in Part II. of the Unemployment Insurance Act, 1935 (p), and the following provisions are of particular importance :

Contributions are payable by employees and by the employers of those persons (sect. 6). In the case of employed persons over sixty-five contributions are payable by employers only. Contributions are normally payable weekly, by the employer in the first instance, and not more than one contribution is payable in respect of a person employed by more than one person in the same week. No contribution is payable in respect of a week in which no services are rendered and no remuneration is paid. An employer cannot contract out of his liability for payment of employer's contributions and may incur a penalty not exceeding £10 by attempting to do so (sect. 9).

Employees' contributions are recoverable by the employer by means of deduction from wages for the period in respect of which the contributions are due (sect. 10).

Where an employed person is employed by more than one person in a calendar week, the first employer is normally regarded as liable for the contributions in respect of that week.

If contributions are paid erroneously, sect. 14 of the Act provides

(l) 28 Halsbury's Statutes 505.

(m) See *post*, pp. 336—337.

(n) 29 Halsbury's Statutes 1166.

(o) 28 Halsbury's Statutes 506.

(p) *Ibid.*, 506. Rates of contribution may be varied by the Minister of Health on report from the Unemployment Insurance Statutory Committee (s. 59). See p. 341, *post*.

that the Minister may make regulations providing for the return of such contributions. Any sums paid in benefit are deducted from the amount of contributions paid by the employed person before repayment is made. The period for which such re-claims can be made is limited to six years and the prescribed form (U.I. 54 or U.I. 56) must be used. In practice it is desirable to make periodic surveys as to the insurability of employees in order that errors may be detected and claims for refunds made.

Sects. 15 and 16 provide for the payment of contributions by means of adhesive or other stamps fixed to or impressed on unemployment books or cards. The preparation of such stamps and arrangements for their sale are in the hands of the Postmaster-General, subject to the approval of the Treasury. [710]

*Inspection.*—Sect. 64 (g) gives power to the Ministry to appoint and pay Inspectors with the sanction of the Treasury. Powers of entry and examination are conferred by sect. 65 and penalties are provided for, by sub-sect. (3), if any person obstructs an inspector, fails to give information or produce documents, or conceals or prevents any person from being examined by an inspector. Sect. 66 enables the Minister to arrange with other Government departments who are liable to conduct inspections under similar conditions, for the use of the officers of such departments. In practice, much of the inspection work of the Ministry of Labour is conducted by local officers of the M. of H., with whom local authorities normally deal. [711]

*Determination of Questions by the Minister and Appeals from his Decisions.*—Sects. 84 and 85 (r) contain important provisions as to the powers of the Minister and rights of appeal from his decisions. Sect. 84 (1) provides that an aggrieved party may appeal from a decision of the Minister, to the High Court, whilst the Minister may himself, in lieu of giving a decision, refer a question for the decision of the High Court. The Minister may revise a decision given by him on the evidence of new facts and an appeal lies against such a revised decision in the ordinary way. The Rules of Court for the regulation of appeals and reference to the High Court provide for limiting the time within which such an appeal may be brought.

It is provided that appeals under this section shall be decided by a single judge of the High Court whose decision shall be final.

On certain questions of fact (*i.e.* whether or not a person is or was an employed person; who is or was the employer of an employed person) the decision of the Minister in proceedings for offences under the Act or involving any question as to contributions under the Act or for the recovery of any sums due from the Unemployment Fund, is conclusive unless an appeal against his decision is pending or the time of such an appeal has not expired. [712]

*Proof of Age, etc.*—County and county borough councils, as the responsible local authorities for arrangements in connection with the registration of births, marriages and deaths are affected by sect. 91 of the Unemployment Insurance Act, 1935 (s). Proof of age, marriage or death, for the purposes of the Act, can be substantiated by a special certificate costing 6d. in the case of a birth and 1s. 0d. in the case of a marriage or death, which must be supplied by the registrar or superintendent registrar in response to a written requisition on a prescribed

(g) 28 Halsbury's Statutes 537.

(s) *Ibid.*, 554.

(r) *Ibid.*, 551.

form, which must be supplied without charge by the person having custody of the register. [713]

**Health and Pensions Insurance.** *Insurability.*—Sect. 1 of the National Health Insurance Act, 1936 (*t*), provides that all persons over the age of sixteen and employed within the meaning of the Act shall be insured. Sect. 2 (1) of the Widows', Orphans' and Old Age Contributory Pensions Act, 1936 (*u*), provides that the expression "insured" means insured under the National Health Insurance Act, 1936. Employment within the meaning of the National Health Insurance Act is defined by reference to Parts I. and II. of the First Schedule of the Act. Paragraph D of Part I. expressly makes employment under any local authority insurable except in so far as such employment is excluded by a special order. A draft of such an Order was issued on May 14, 1937, and provides that the following shall be deemed not to be employment within the meaning of the Act: chaplains or other ministers, medical practitioners, coroners, deputy coroners, public analysts, public vaccinators, registrars of births, deaths and marriages, unpaid apprentices and officers and employment otherwise than as an officer or servant of an authority not being an employment specified in Part I. (a), (b), (c), (e) or (f) of the First Schedule to the Act. Part II. of the Schedule deals with exceptions, and the following are of importance to local authorities: (1) Employment under a local authority, where the Minister certifies that the terms of employment provide conditions as to sickness and disablement equivalent to the benefits provided by the Act. (2) Employment as a teacher having benefits in a statutory superannuation fund. Entrants to the teaching profession are also exempt during the period whilst they are waiting for the announcement of the result of a certificate examination. (3) Employment otherwise than by way of manual labour at a rate of remuneration the value of which exceeds £250 per annum.

The definition of "insurability" for health and pension purposes is wider than that for unemployment. Questions have arisen as to the insurability of persons engaged in employment under local authorities, hinging chiefly on the definition of manual labour. [714]

In connection with certificates of exception, the Minister distinguishes between two sets of conditions. Thus a certificate may extend to insurances for both health and pension purposes or for health purposes only. A certificate extending to cover pension insurance is not normally issued unless the employed persons, to be excepted, have rights in a statutory superannuation fund of an equivalent value.

Officers of local authorities normally come within the class of persons having benefits secured to them, on the whole equivalent to those provided by the National Health Insurance Act, 1936, only, whilst police officers entitled to pensions under the Police Pensions Act, 1921 (*a*), are entitled to benefits equivalent to the whole of those provided by the legislation under consideration and are usually covered by a certificate of exception for both purposes.

Sect. 5 of the National Health Insurance Act, 1936, includes provision as to the exemption of certain persons from the provisions of the Act in virtue of a certificate issued by the Minister of Health, in essence similar to those relating to unemployment insurance (see *ante*, p. 334).

(i) 29 Halsbury's Statutes 1071.

(a) 12 Halsbury's Statutes 873.

L.G.L. IX.—22

(u) *Ibid.*, 1201.



Reference has already been made to the power of the Minister to determine questions as to insurability (see *ante*, p. 336). [715]

**Contributions.**—The provisions of sects. 12—31 (*b*) of the National Health Insurance Act, 1936, in so far as they relate to the machinery of collection of contributions from employers and employed persons are substantially similar to those discussed in connection with unemployment insurance, but the following matters should be considered.

Sect. 29 of the Act of 1936 provides that contributions under the Act are to be collected with contributions under the Widows', Orphans' and Old Age Contributory Pensions Act, 1936, and the operative rates of contribution are set out in Appendix I. hereto. In the case of low wage earners, the contribution from the employed person is reduced in respect of National Health Insurance, and the employer's contribution is correspondingly increased. [716]

#### OTHER MATTERS AFFECTING THE LOCAL AUTHORITY

Certain local authorities have a special relationship with the Ministry of Labour and the M. of H. in connection with benefits payable by the central departments.

**Public Assistance.**—An important aspect of these relationships is to be found in the administration of public assistance functions by county and county borough councils, and a clear understanding of the somewhat intricate provisions of the various Acts is necessary if a right allocation of charge as between national and local funds is to be achieved.

These relationships may be conveniently dealt with under three main heads:

- (1) Claims which may be made by the public assistance authority in respect of relief granted which would not have been granted if assistance had been available from central funds. (Separate provisions in this connection are to be found in two Acts.)
- (2) Recovery of contributions towards costs of maintenance in hospitals provided by public assistance authorities, from Widows', Orphans' and Old Age Contributory Pensions.
- (8) Recovery of costs of maintenance in respect of persons who are members of approved societies under the provisions of the National Health Insurance Acts. [717]

(1) **Excess Claims.**—The statutory powers in this connection are to be found in sect. 54 of the Unemployment Insurance Act, 1935 (*c*), and sect. 26 of the Widows', Orphans' and Old Age Contributory Pensions Act, 1936. The effect of these sections is to provide that where outdoor relief has been granted to or on account of any person during the period when benefit or pension should have been payable but has not been paid, the Public Assistance Authority shall be entitled to recover from the Minister of Labour or the Minister of Health the amount of assistance so granted. Similarly, if relief has been granted in excess of the amount which would have been so granted, the amount of the excess shall be recoverable from the appropriate Minister. The relevant form of claim in the case of pensions is prescribed by Circular 661—Form "A"—whilst an appropriate claim form for unemployment insurance cases has been designed by Shaw & Sons (Reference U.I.A. Form A). There is no corresponding provision as to relief granted in respect of non-paid national health insurance benefit. [718]

(b) 29 Halsbury's Statutes 1078—1086.

(c) 28 Halsbury's Statutes 529.

(2) *Recovery of Costs of Maintenance from Contributory Pensions.*—

This matter is one of increasing importance for local authorities who have provided hospital accommodation either under the poor laws or under the P.H.A. The legal provisions dealing with this matter are to be found in sects. 7, 21 and 23 of the Widows', Orphans' and Old Age Contributory Pensions Act, 1936 (*d*), and in the Third Schedule to that Act. Clause 1 of the Third Schedule provides that, where any person is an inmate of any workhouse or other poor law institution he shall, subject to the provisions of the Schedule, be disqualified for receiving any sum accruing during the period that he is such an inmate. This also extends to cover any sums due to him at the date he became such an inmate. Clause 2 of this Schedule, however, provides that if a person has become an inmate of a workhouse or poor law institution for the purpose of obtaining medical or surgical treatment, the disqualification included in Clause 1 shall not be applied.

Whilst a person is an inmate of a hospital, it is normally impossible for him to arrange personally for the encashment of pension orders, and it becomes necessary for him to appoint an agent in accordance with regulations made by the Minister under sect. 32 (1) (h) of the Widows', Orphans' and Old Age Contributory Pensions Act, 1936.

[719]

Where the local authority has assessed the patient to make a contribution towards his maintenance in hospital, it is obviously a convenience for an officer of the local authority to be appointed by the pensioner as his agent in this connection, and for such sums to be collected at a single operation. Care must be taken, however, that the provisions of sect. 36 (1) of the Widows', Orphans' and Old Age Contributory Pensions Act, 1936, are not contravened. This subsection provides that pensions under the Act are inalienable, and the local authority should make it clear that it is assessing a contribution on the income of the pensioner, and that the appointment of its official as an agent by the pensioner is a voluntary act on the part of the latter.

Local authorities have experienced some administrative difficulties as a result of these provisions and on occasion fraud by officers of local authorities has been facilitated.

The Minister of Health contends that pensions are not intended as a subvention in aid of local rates and is unwilling to take legislative steps to assist local authorities in the collection of these sums.

[720]

(3) *Contributors under the National Health Insurance Act, 1936, who are Inmates of Hospitals, etc.*—Sect. 55 (1) of the National Health Insurance Act, 1936 (*e*), provides that no payment on account of sickness or disablement benefit shall be made in respect of any period when the insured person is an inmate of any workhouse, hospital (including mental hospital), asylum, convalescent home or infirmary, supported by any public authority or out of any public funds. This, however, is subject to the proviso contained in sub-sect. (2) that, if the contributor has no dependants for whose benefit sums payable could be applied, benefit may be paid either in whole or in part to the Institution, provided that the contributor authorises such action and the approved society or committee administering benefit is willing to take this course.

(d) 29 Halsbury's Statutes 1204, 1216 and 1218.

(e) *Ibid.*, 1097.

If the person dies in an institution of the character set out, and no payments have been made to, or in respect of, the contributor, the accrued benefit to an extent not exceeding £50 shall be deemed to form part of his estate.

These provisions are of value to local authorities in the performance of their statutory duty under sect. 184 of the P.H.A., 1936 (*f*), to recover the cost of maintenance of persons admitted to hospitals provided by them. [721]

**Education.**—In their capacity as education authorities some local authorities have important duties in connection with the unemployment insurance of juveniles and the administration of choice of employment schemes.

Part VI. of the Unemployment Insurance Act, 1935 (*g*), provides for the co-operation of local education authorities in the administration of certain phases of unemployment insurance. Under the provisions of sect. 75 contributions are to be credited in respect of children who remain at school after attaining the age at which the period for compulsory elementary instruction ends. Sub-sect. (3) (*d*) requires local authorities responsible for the management of schools, attendance at which may be reckoned in this connection, to supply prescribed particulars as to attendances.

Sect. 76 (*h*) makes it compulsory for education authorities to submit proposals to the Minister for the provision of necessary courses of instruction for persons under the age of eighteen years who, while capable of and available for work, have no such employment or only part-time employment. Proposals must be in accord with the schemes made by him with the consent of the Treasury after consultation with the Board of Education. If the Minister certifies that a local authority has failed to make satisfactory provision, the authority must do so within three months of the issue of the certificate by the Minister. Failing this, the Minister may make such order as he deems necessary to secure the provision of adequate instruction and such order may be enforced by *mandamus*. In numerous cases local authorities have made the provision required by this section, by means of co-operation with neighbouring authorities. This is particularly the case as regards areas contiguous to county boroughs.

Sect. 81 (*i*) empowers local education authorities to make arrangements for giving assistance in respect of choice of employment. Such arrangements must be in accordance with the scheme agreed by the Ministry and may also extend to cover duties in connection with the attendance at authorised courses of persons up to the age of eighteen; the administration of benefit claimed by persons under that age; and the administration of increase of benefit claimed in respect of dependent children between fourteen and sixteen years of age.

Sums paid by the local authority as benefit are refunded in full from the Unemployment Fund, and a grant of 75 per cent. is made towards the administrative costs of the local authority. Sub-sect. (3) (*l*), makes adequate provision for co-operation between local education authorities and for delegation by county councils to borough or district councils of all or any of the powers of the county council in this connection. [722]

(*f*) 29 Halsbury's Statutes 440.

(*h*) *Ibid.*, 546.

(*g*) 28 Halsbury's Statutes 545.

(*i*) *Ibid.*, 550.

## APPENDICES

## APPENDIX I.

## WEEKLY RATES OF CONTRIBUTIONS

	Employee.	Employer.	Total.
HEALTH AND PENSIONS	<i>d.</i>	<i>s. d.</i>	<i>s. d.</i>
<i>Ordinary Rates</i>			
Men - - - over 65 - - -	—	10	10
" - - - 16 to 65 - - -	10	10	1 8
Women - - - over 65 - - -	—	7	7
" - - - 16 to 65 - - -	7	7	1 2
<i>Exempt Rates</i>			
Men - - - 16 to 65 - - -	2½	9	11½
Women - - - 16 to 65 - - -	—	7	7
<i>Low Wage Earners aged 18 or over</i>			
Men up to and including 3s. } per full	5½	1 2½	1 8
" not exceeding 4s. } working	9	11	1 8
Women up to and including 3s. } day	3	11	1 2
" not exceeding 4s. }	6	8	1 2
UNEMPLOYMENT			
(as amended by S.R. & O., 1936, No. 351)			
<i>Ordinary Rates</i>			
Men - - - over 65 - - -	—	9	9
" - - - 21 to 65 - - -	9	9	1 6
" - - - 18 to 21 - - -	8	8	1 4
Boys - - - 16 to 18 - - -	5	5	10
" - - - under 16 years of age	2	2	4
Women - - - over 65 - - -	—	8	8
" - - - 21 to 65 - - -	8	8	1 4
" - - - 18 to 21 - - -	7	7	1 2
Girls - - - 16 to 18 - - -	4½	4½	9
" - - - under 16 years of age	2	2	4
<i>Exempt Rates</i>			
Men - - - 21 to 65 - - -	—	9	9
" - - - 18 to 21 - - -	—	8	8
Boys - - - 16 to 18 - - -	—	5	5
" - - - under 16 years of age	—	2	2
Women - - - 21 to 65 - - -	—	8	8
" - - - 18 to 21 - - -	—	7	7
Girls - - - 16 to 18 - - -	—	4½	4½
" - - - under 16 years of age	—	2	2
<i>Agricultural Rates</i>			
Men - - - 21 to 65 - - -	4½	4½	9
" - - - 18 to 21 - - -	4	4	8
Boys - - - 16 to 18 - - -	2	2	4
" - - - under 16 years of age	1½	1½	3
Women - - - 21 to 65 - - -	4	4	8
" - - - 18 to 21 - - -	3½	3½	7
Girls - - - 16 to 18 - - -	1½	1½	3
" - - - under 16 years of age	1	1	2

## APPENDIX II.

## DECISIONS AS TO INSURABILITY OR OTHERWISE OF CERTAIN TYPES OF EMPLOYEES OF LOCAL AUTHORITIES.

National Health Insurance—Decisions contained in Volume (Memorandum 151, September, 1931) of Memoranda of decisions given by the Minister of Health as to the liability or title to insurance under the National Health Insurance Acts and supplements thereto numbered 1 to 9.

Volume or Supplement.	Official Reference.	Employee.	Decision.
Supplement No. 1	A. 591	Superintendent of Burial Ground	Duties included gardening and occasional grave digging. Remuneration in excess of £250 per annum. Held to be manual employment and therefore insurable.
Supplement No. 4	A. 665	Male Nurse at County Council Hospital	Employee was engaged through an Ex-Service Men's Association, no fee being payable by the man. Under control of officers of the county council and all sums paid by the county council to the Association were paid over to the man without deduction. Held that the man was an employee of the county council within the meaning of the Act and insurable.
Supplement No. 9	710	Evening School Teacher	Salary payable for part-time service exceeded the equivalent of £250 per annum for full-time service. Employment not by way of manual labour and therefore not insurable.
Supplement No. 9	711	Rating and Valuation Officer	Employed as designated officer for the purpose of Representation of the People Act, 1918. Salary of Rating and Valuation Officer did not exceed £250 per annum. It was held that fees earned as designated officer were not to be aggregated with salary in determining the total earnings for purposes of the Act. Held, therefore, that although total remuneration exceeded £250 per annum and work was of a non-manual character, employee remained insurable.
Supplement No. 3	X. 639	House refuse removal contractors	Two partners entered into an annual contract with a local authority for the removal of dry house refuse at an agreed price. The contractor was to provide haulage and labour, to commence work at 8 a.m. every Monday morning and to proceed with diligence and dispatch. The Minister held that the employment was by way of manual labour under a contract for the performance of such labour. The question was referred to ROORE, J., under sect. 89 of the National Health Insurance Act, 1924 (now re-enacted as sect. 161 of the Act of 1936), on July 29, 1932, and the decision was reversed on the ground that there was not a contract of service within the meaning of the Act.

## NATIONAL HEALTH INSURANCE COMMITTEES

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*See also title: NATIONAL HEALTH AND UNEMPLOYMENT INSURANCE.*

**Introduction.**—The law relating to national health insurance committees is contained in the National Health Insurance Act, 1936 (a), and in regulations made by the Minister of Health in pursuance of powers conferred upon him by that Act. Of these the most important are the National Health Insurance (Insurance Committees) Regulations, 1937 (b), and the National Health Insurance (Medical Benefit) Regulations, 1936 (c).

An insurance committee is not a local authority, but it has constitutional, and may have functional, contacts with local authorities. The Minister has wide powers of direction and control and the committees are local *ad hoc* bodies for the administration in a uniform manner (within limitations imposed by varying conditions) of a national service, namely, the administration of medical treatment and attendance, and of other benefits in the case of deposit contributors (sects. 32, 34). [725]

**Constitution of Insurance Committees.**—Sect. 91 of the Act provides that there shall be an insurance committee for every county and county borough, and that it shall be a corporate body with the usual characteristics. It may take, purchase and hold land for the purposes of the Act, subject to the consent of the Minister, without licence in mortmain. By sub-sect. (3) the minimum and maximum numbers of members are fixed at twenty and forty respectively, the actual number being determined by the Minister. Of these one-fifth, of whom two must be women, are appointed by the county or county borough council of the area; three-fifths are representative of insured persons. Of the remainder, three are medical practitioners, two being appointed by the local medical committee and one by the county or county borough council. The Minister appoints the balance of the members, one of whom at least must be a medical practitioner and two at least must be women. Another is usually a pharmacist. The numbers may be varied by the Minister (by regulations made under sect. 92 (1) (a)) if the committee consists of less than 40 members, but regard has to be paid

(a) 20 Halsbury's Statutes 1064.  
(c) S.R. & O., 1936, No. 1163.

(b) S.R. & O., 1937, No. 408.

to the desirability of maintaining the same proportions. The modifications in the structure of committees consisting of less than forty members are prescribed in Art. 4 of the National Health Insurance (Insurance Committees) Regulations, 1937.

By sect. 93 the Minister may authorise payment to members of travelling and subsistence allowances and of compensation for loss of remunerative time, and a grant not exceeding £28,000 per annum may be made from moneys provided by Parliament for this purpose.

Sect. 94 provides for combination of insurance committees either voluntarily, or compulsorily by the Minister. After a public inquiry, the Minister may order members of a defaulting committee to vacate their office (sect. 95). [726]

**Committees Representing Doctors and Pharmacists.**—Sects. 97 and 98 provide representative organs for the medical profession in their dealing with insurance committees. By sect. 97 the Minister may recognise a local medical committee as the appropriate body for the discussion of matters of general principle and a panel committee of medical practitioners who have entered into agreements with the insurance committee, is provided for under sect. 98, to put before the insurance committee the opinions and wishes of those practitioners. Where no local medical committee has been recognised under sect. 97, the panel committee may be so recognised. A similar committee representing persons who have agreed to supply drugs, medicines and appliances to insured persons, termed the pharmaceutical committee, is provided for by sect. 99. The expenses, not exceeding twopenney per insured person per year, of the two last-mentioned committees may be met, with the authorisation of the Minister, from funds available for medical benefit within the area.

Detailed provisions as to the method of appointment and election of representatives on the insurance committee and the representative committees referred to are contained in the S.R. & O., to which reference has been made. [727]

**Machinery.**—The powers of insurance committees as to the appointment of staff and sub-committees and the provision of offices are contained in Part V. of the National Health Insurance (Insurance Committees) Regulations, made under sect. 92 (1) (a) and (b) of the Act. The appointment of a clerk is mandatory and other necessary staff may be appointed with the consent of the Minister. Remuneration to all officers, including the clerk, must be approved by the Minister. Article 33 of the regulations requires the appointment of a finance sub-committee consisting wholly of members of the committee and of such other sub-committees (which may contain co-opted members) as the committee thinks fit.

In addition to these powers of appointment, insurance committees under Part V. of the National Health Insurance (Medical Benefit) Regulations 1936, have to appoint a medical services sub-committee (Art. 32), a pharmaceutical service sub-committee (Art. 36), and a joint services sub-committee (Art. 38).

Article 35 of the National Health (Insurance Committees) Regulations, 1937, empowers an insurance committee to provide itself with offices or to use offices belonging to a local authority on such terms as may be agreed.

Detailed provisions as to financial transactions and the accounting therefor are contained in Articles 36 and 43 of the same regulations. [728]

**Duties.**—The primary tasks of insurance committees are defined in sects. 35 and 39 of the National Health Insurance Act, 1936. Under the first of these the committee have to make such arrangements with medical practitioners as will secure that insured persons receive adequate medical treatment and attendance. In particular the scheme must provide for: (a) due publicity as to medical practitioners available; (b) the right of practitioners to be included in published lists; (c) the right of an insured person to select a particular medical practitioner; and (d) the allocation to medical practitioners of persons not exercising the right of choice. Sect. 39 imposes a similar duty in regard to the supply of proper and sufficient drugs, medicines and appliances.

The detailed conduct of the committee's work is defined by the National Health Insurance (Medical Benefit) Regulations, 1936. The medical and pharmaceutical services sub-committees to which reference has been made are particularly concerned with the maintenance of the terms of service which are arranged between the committee on the one hand and medical practitioners and pharmacists on the other. Complaints against doctors by insured persons are referred to the medical service sub-committee. The testing of drugs and appliances supplied to insured persons is supervised in the first instance by the pharmaceutical service sub-committee. Both these sub-committees have powers to prepare reports for submission to the insurance committee which can either take direct action (e.g. by limiting the number of persons on the panel of a medical practitioner), or submit recommendations to the Minister. The joint services sub-committee has the duty of considering and making recommendations on matters affecting medical practitioners and pharmacists jointly and other matters that may be referred to them by the committee or the other sub-committees.

An appeal against decisions of the committee may be made to the Minister whose decision is final (National Health Insurance (Medical Benefit) Regulations, 1936). [729]

**Other Powers.**—An insurance committee has power, under sect. 70 of the Act, to make subscriptions or donations of an eleemosynary character, to hospitals, dispensaries, and other charitable institutions or for the support of district nurses.

Sect. 96 of the Act makes it a duty for the insurance committee to supply reports to the Minister as to the health of insured persons in their area and the committee may themselves, or through the agencies of local education authorities, universities or other institutions make provision for lectures and publications on health topics. Sub-sects. (2) and (3) of the section provide machinery for co-operation with local authorities: (a) by permitting the attendance of the medical officer for the area at meetings of the committee; and (b) by imposing a duty on the Minister to transmit to local public health authorities, copies of reports, returns and suggestions made by the committee.

It is understood that a scheme is now under discussion in certain areas, for the medical records of school leavers to be made available to insurance committees for the use of panel doctors. [730]

**Conclusion.**—It would not appear that liaison between insurance committees and local authorities is so well developed as might be desired, and it may perhaps be doubted whether common membership of the two bodies coupled with permissive powers for the attendance



at meetings of the committee by the M.O.H. to the local authority are in themselves adequate to attain the desired liaison.

The national insurance scheme is incomplete in several respects and not all the gaps are made good in the field of local government.

For example, it applies only to insured persons and not to dependants. Specialist treatment is not a general provision by either authority—the regional medical officers under the insurance scheme are specialists in assessing incapacity.

The gap between the ages of 14 and 16 requires to be closed and the transmission of health records completed during school life to panel doctors is obviously very desirable. To facilitate this, it would be necessary for the records of local authorities to be kept in a substantially uniform manner, but this is a relatively simple problem of administration rather than one which demands legislation. [781]

## NAVAL VOTERS

See LOCAL GOVERNMENT ELECTORS.

## NEGLIGENCE

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See also titles :

ACCIDENTS ;		HIGHWAY AUTHORITIES ;
BREAKING UP OF ROADS ;		NUISANCE AND NON-NUISANCE ;
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**Meaning.**—Negligence, a negative rather than a positive term, is probably best defined as a neglect of some care which persons are bound by law to exercise towards other persons (a). A further definition has been given as "the absence of care according to the circumstances" (b). It would therefore follow that where there is no duty to take care, no legal consequences will follow a negligent act. But where a duty to take care is present, or a person is under a statutory

(a) *Per Bowen, L.J., in Thomas v. Quartermaine* (1887), 18 Q. B. D. 685, at p. 694; 86 Digest 8, 10. For the general theory of negligence in English law, see note at p. 510 of "A Digest of English Civil Law," ed. Prof. Jenks, 3rd edn., 1937.

(b) *Vaughan v. Taff Vale Rail. Co.* (1890), 5 H. & N. 679; 86 Digest 7, 7.

obligation to exercise care, the degree necessary will depend upon the circumstances of the case (e), and may vary according to the risk involved and the magnitude of the respective injury. These facts are of great importance where local authorities are concerned, for a duty to take care may arise in various ways, e.g. from ownership of real property, goods, animals, etc., from proximity to or contact with other persons and their property, from special contractual or quasi-contractual relationships or, as will be shown later, by various statutes which impose special duties involving care in their performance, for example the performance of the legal duties and obligations of a local authority under the various Public Health and other Acts. In passing, it may be mentioned that while the law of negligence is largely the creature of the common law, no liability existed where death was the result of a negligent act until the passing of Lord Campbell's Act (d), as to the scope and effect of which reference should be made to the title ACCIDENTS. [782]

In considering the liability of local authorities in the negligent carrying out of their functions under various enactments the distinction between misfeasance and non-feasance must be noticed. Briefly, no action will lie against an authority for non-feasance as opposed to misfeasance, but as to the narrow distinction that may exist in certain cases, reference must be made to the title MISFEASANCE AND NON-FEASANCE and the principles there considered. It should be noted, too, that the duty of a public authority to take care may exist in favour of a particular individual, and that where a particular individual is injured by their negligence in the performance of a statutory duty, that person has a right of action in respect of such negligence, unless the right has been expressly or implicitly excluded by the particular statute concerned. Sect. 278 of the P.H.A., 1936 (e), provides for compensation in case of damage to a person by reason of the exercise by a local authority of their powers under that Act, where the person injured is not himself in default, and apart from the section, an action would lie for damages for an injury sustained where there is negligence or a lack of proper care and skill in the carrying out of lawful acts and/or duties. [783]

As to the measure of damages in respect of negligent breach of a contractual duty, reference should be made to 23 Halsbury (2nd ed.), p. 722. In actions for damages for negligence, it is the province of the judge to decide whether or no there is evidence on which the jury can reasonably find negligence, either direct or inferential. The jury's function is to say whether or not negligence is in fact established or to be inferred. Further, as to these functions, see *ibid.*, pp. 442 *et seq.* As to the limitation of time within which proceedings must be taken against public authorities, see *post*, p. 855.

Neglect of a statutory duty, in the sense of an omission to perform, as distinguished from negligence in the performance of a statutory duty, only gives a right of action in favour of the injured person where such right is expressly or implicitly given by the statute (f). [784]

(c) See Halsbury's Laws of England, Vol. XXI., p. 360.

(d) The Fatal Accidents Act, 1846; 12 Halsbury's Statutes 335. Recently amended by ss. 1, 2 of the Law Reform (Miscellaneous Provisions) Act, 1934; 27 Halsbury's Statutes 220-222.

(e) 29 Halsbury's Statutes 242. Replacing P.H.A., 1875, s. 308.

(f) *Cowley v. Newmarket Local Board*, [1892] A. C. 345; 26 Digest 400, 1251.

**Contributory Negligence.**—Contributory negligence may, however, be a defence to an action for negligence, if not too remote, where shown to be a substantial cause of the accident causing the injury; in other words, where it can be found that the plaintiff, in an action for negligence, has, by negligence on his own part, directly contributed to the injury in that his own negligent conduct was a material part of the effective cause of it. But where such a defence is raised, the test is whether the negligence of the defendant was the real, direct and effective cause of the accident. Should the defendant's negligence be proved, while that of the plaintiff is a matter of doubt, the defendant is not relieved from liability (g). The law on the point has been thus expressed (h). "The plaintiff in an action for negligence cannot succeed if it is found that he himself has been guilty of negligence or want of ordinary care which contributed to cause the accident . . . yet, if the defendant could, in the result, by the exercise of ordinary care and diligence have avoided the mischief which happened, the plaintiff's negligence will not excuse him." As to contributory negligence generally, including negligence by a third party, reference should be made to 23 Halsbury (2nd ed.) 679. [735]

Contributory negligence on the part of children is a matter of some importance to local authorities, particularly with regard to accidents arising out of amusements, etc., in public recreation grounds (i). With regard to this matter, it appears that the same standard of care is not expected from a child as from an adult in circumstances likely to result in an injury, and that where a child is merely following the instincts that are natural to it at its age, and does something which contributes to an injury, it cannot be held guilty of contributory negligence (k).

Briefly, the following considerations apply to contributory negligence in the case of a child. There is a higher degree of duty imposed to take care not to leave something that is dangerous to children, if interfered with, in a place where children may reach it, particularly in a place frequented by them, than where there is no such probability. When something is done by a council which offers an inducement or opportunity for children to run into danger, proper and reasonable precautions should be taken by them to prevent such inducement or opportunity resulting in danger. But in recent decisions a tendency to limit the liability of local authorities for the irresponsible acts of children may be seen. Thus a county council engaged in the improvement of a road were held by the Court of Appeal not to be liable for injuries sustained by a boy of six years, who climbed a wall with the assistance of soil placed against it, and fell 13 feet on the other side of the wall, the council's workmen having warned children away from the work whenever they were seen (l). See also *Purkis v. Walthamstow*

(g) Further as to contributory negligence, see 23 Halsbury (2nd ed.) 670 and cases cited in 36 Digest 109.

(h) *Tuff v. Warman* (1858), 5 C. B. (N. S.) 578; 36 Digest 109, 726, and *Radley v. L.N.W. Rail. Co.* (1876), 1 App. Cas. 754; 36 Digest 109, 729.

(i) See title GAMES, PROVISION FOR.

(k) See *Lynch v. Nurdin* (1841), 1 Q. B. 29; 5 J. P. 319; 36 Digest 24, 118. See also title ACCIDENTS, as to accidents to schoolchildren in relation to the defence of contributory negligence, and *Glasgow Corpn. v. Taylor*, cited on p. 21 of Vol. I.

(l) *Liddle v. North Riding of Yorkshire County Council*, [1934] 2 K. B. 101; Digest (Supp.).

*Borough Council (m)*, as to a boy who fell from a swing in a recreation ground, an extract from the judgment being given on pp. 157, 158 of Vol. VI. [786]

**Negligence or alleged Negligence of Local Authorities.**—"A person clothed with statutory authority to do an act" (*e.g.* a local authority) "must in doing it exercise reasonable care to prevent injury to others" (*n*); and again, "I take it . . . that it is now thoroughly well established that no action will lie for doing that which the legislature has authorised, if it be done without negligence, although it does occasion danger to anyone (*o*); but an action does lie for doing that which the legislature has authorised, if it be done negligently" (*p*). These two excerpts contain the principles of the liability of a local authority in the carrying out of their statutory duties and obligations. [787]

Provision is made by sect. 265 of the P.H.A., 1875 (*q*), for the protection of local authorities and their officers from personal liability, provided that the matter or thing done by them or the contract under which the matter or thing was done was entered into *bona fide* for the purpose of executing the 1875 Act. That section is applied by sect. 305 of the P.H.A., 1936 (*r*), to local authorities, joint boards, and port health authorities, under the latter Act; see, as to the effect of the sections and the nature of the protection afforded by them, the cases cited in the notes to sect. 305 of the P.H.A., 1936, in Lunnley's *Public Health*, 11th ed.

Allegations against a local authority in regard to negligence will be mainly concerned with their functions as (i.) sewer authorities, (ii.) highway authorities, and (iii.) water authorities, but see p. 354, *post*, for the liability of local authorities for contractors, and of servants of local authorities and other general matters in the carrying out of which negligence may be pleaded where injury or loss results. It is obviously impossible within the limits of the present title to do more than state the principles involved, and their application can best be ascertained from the mass of case-law on the subject. Cases of interest only will be noted where important principles are involved. [788]

**Sewers.**—Sect. 14 of the P.H.A., 1936 (*s*), imposes upon local authorities the duty of providing such public sewers as may be necessary for effectually draining their district for the purposes of the Act and of providing for effectually dealing with their contents. By sect. 23 (*t*) it is the duty of every local authority to maintain, cleanse and empty all public sewers vested in them. Sect. 31 (*u*) provides that they shall so discharge these functions as not to create a nuisance. Where a local authority make default in these duties, the M. of H. can enforce proper performance under sects. 321—325 (*v*), but such a power,

(*m*) (1934), 98 J. P. 244; Digest (Supp.).

(*n*) *Per Lord WARRENBURY in Great Central Rail. Co. v. Hewlett*, [1916] 2 A. C. 511; 26 Digest 419, 1383.

(*o*) In which case compensation may be payable under s. 308 of the P.H.A., 1875, see *ante*, p. 347.

(*p*) Lord BLACKBURN in *Geddis v. Bann Reservoir Proprietors* (1878), 3 App. Cas. 430 at p. 455; 38 Digest 25, 137.

(*q*) 13 Halsbury's Statutes 734.

(*r*) 29 Halsbury's Statutes 259.

(*s*) *Ibid.*, 233.

(*t*) *Ibid.*, 343.

(*u*) *Ibid.*, 348.

(*v*) *Ibid.*, 524—527.

it appears, does not exclude resort to the courts. It should be observed that the language of the P.H.A., 1936, differs considerably from that of the P.H.A., 1875, but the following cases will indicate what has been held to constitute negligence in connection with the actions of local authorities under the latter Act.

A local authority served notices under sects. 23 and 36 of P.H.A., 1875 (*x*), on the owners of certain property, to provide water closets and connect them to a sewer to be also provided. A six-inch sewer was constructed by the owners by agreement across the plaintiff's garden, one-half of the sewer being above ground. Plaintiff fell over it and was injured. It was held by the Court of Appeal that in spite of the fact that the work was done under the superintendence of the sanitary inspector, there was no liability for damages because there had been no report from their surveyor, and the authority could have constructed the sewer wholly above ground. In the court below, ATKIN, J., said that under sect. 19 of the P.H.A., 1875, there was no duty imposed on the authority to see that the sewer was not a source of danger, provided they kept it as a sewer "for the efficient conveyance of their drainage" (*a*). [739]

It was decided in another case that a borough council were not liable for the flooding of cellars, causing damage, where in heavy storms sewage was driven up and blocked the sewer, as the cause of the damage was not a defect in the sewer but the increase in the number of buildings that drained into it, the sewer being, in fact, too small to take the influx of water (*b*). This case provides an instance of non-liability for non-feasance, as to which see title MISFEASANCE AND NON-FEASANCE. A local authority executed works under sect. 19 of the Act of 1875, and damage was caused by the subsidence of a highway resulting from the defective condition of a sewer and the soil under the said highway. It was held to be established that under ordinary circumstances no action would lie for an injury occasioned by the execution of a statutory duty unless it had been negligently performed, and in this case there was nothing to warn defendants that there was anything wrong with the sewer, nor could they by the exercise of any reasonable care have discovered the existence of the hole under the road until the accident happened (*c*). In *A.-G. v. Lewes Corporation* (*d*), it was held that periodical inundation of sewage from a sewer out of repair was a continuing cause of damage and the right to damages was not limited by the Public Authorities Protection Act, 1893 (*e*), to damages in respect of the floodings within six months before the action. See also, as to liability for neglect to repair a sewer, and consequent damage resulting, the case cited below (*f*).

A frequent cause of action for damages under sect. 10 of the P.H.A., 1875 (now replaced by sects. 23 and 31 of the P.H.A., 1936), was in respect of illness occasioned by the escape of noxious gases as the result of faulty ventilation of the sewers, due to alleged negligence on the part of the authority. For examples, see *Brown v. Whickham*

(a) 18 Halsbury's Statutes 685, 640.

(b) *Morris v. Mynyddistwyn U.D.C.*, [1917] 2 K. B. 809; Digest (Supp.).

(c) *Stretton's Derby Brewery Co., Ltd. v. Derby Corpn.*, [1894] 1 Ch. 491; 38 Digest 26, 140.

(d) *Lambert v. Louestoft Corpn.*, [1901] 1 K. B. 590; 38 Digest 26, 141.

(e) [1911] 2 Ch. 495; 38 Digest 190, 959.

(f) As to this Act, see *post*, p. 877.

(g) *Hart v. St. Marylebone Borough Council* (1912), 76 J. P. 257; 38 Digest 128, 945

*U.D.C. (g)* and *Russell v. Royston U.D.C. (h)*. As to damages successfully claimed on the death of an employee of the council caused by sewer gas, see *Digby v. East Ham U.D.C. (i)*. A local authority are liable for the negligence of their contractors in laying a sewer (*k*). [740]

*Highways.*—By sect. 144 of the P.H.A., 1875 (*l*), and sect. 25 of L.G.A., 1894 (*m*), the functions of surveyors of highways were vested in borough and district councils. These sections were affected, and other far-reaching changes in the law of highways were made, by Part III. of the L.G.A., 1929 (*n*). Generally, non-repair is not actionable (*o*), but non-feasance in the repair of highways, that is, the failure to keep a road in repair, must be carefully distinguished from misfeasance. In the latter case, where negligence is pleaded, contributory negligence (*p*) may relieve the authority from liability (*q*). The neglect of a highway authority to repair a road, even where special damage is occasioned to an individual, will not render the authority liable to an action for damages unless, apart from their non-feasance, some negligent or improper action has been done by them. Reference may be made to the following case, as to the necessity of a public authority taking "reasonable care" in carrying out works. A local authority, under s. 43 of the P.H.A. Amendment Act, 1890 (*r*), planted trees along a highway and placed iron guards around them. The chief constable, under the Defence of the Realm Act, ordered lights to be extinguished in the streets at a certain hour, and as a result a pedestrian's eye was injured by one of the spikes. The Court of Appeal held that although the local authority had used their statutory powers reasonably, there was a continuous duty cast upon them to take reasonable care for the protection of the public, even though the circumstances (as in this case) were extraordinary and the difficulties of the authorities great (*s*). As there was evidence on which the jury could find negligence, which they had in fact found, the plaintiff rightly succeeded. [741]

The position of a highway authority with regard to hidden dangers or traps is seen from the following excerpt from a judgment of BANKES, L.J. (*t*). "If a person creates a dangerous condition of things (something in the nature of a concealed trap) whether in a public highway or on his own premises . . . and he sees some other person who to his knowledge is unaware of the existence of the danger, lawfully exposing himself to the danger which he has created, he is under a duty to give such person a warning." And LUSH, J., held that although a new highway is dedicated, the public must, if they accept it as a highway, do so with its defects. But if a highway authority undertake a duty (e.g. lighting it) they must exercise due care and have due regard to the

(g) (1898), *Times*, July 14; 41 Digest 25, 189.

(h) (1918), 77 J. P. Jo. 317; 41 Digest 25, 190.

(i) (1896), 18 T. L. R. 11. For the new trial, see *Times*, May 25, 1927.

(k) *Hardaker v. Idle U.D.C.*, [1896] 1 Q. B. 335; 25 Digest 480, 62.

(l) 18 Halsbury's Statutes 683.

(m) 10 Halsbury's Statutes 794.

(n) See title HIGHWAY AUTHORITIES.

(o) See title MISFEASANCE AND NON-FEASANCE.

(p) See ante, p. 348.

(q) See *Butler v. Drogheda Corp.*, [1907] 2 I. R. 184, where the plaintiff noticed the danger, but took the risk.

(r) 18 Halsbury's Statutes 840.

(s) *Morrison v. Sheffield Corp.*, [1917] 2 K. B. 806; 26 Digest 445, 1623.

(t) *Kimber v. Gas Light & Coke Co.*, [1918] 1 K. B. 489, at p. 445; 36 Digest 18, 83.

safety of those who use it, or they will be guilty of negligence (u). It has been held that a local authority are not liable for negligent construction by a previous highway authority, of a drain in a highway (a). For cases in connection with highways, reference should be made to Lumley's Public Health, 10th ed., pp. 267 *et seq.*, and the notes to sect. 265 of the P.H.A., 1875, on pp. 584—589. See also *Tidy v. Batiman* (b), as to questions of negligence and contributory negligence being left to the jury. [742]

*Water Supply.*—The functions of a local authority in relation to a supply of water within their district are contained in sect. 116 of the P.H.A., 1936 (c), which authorises them, among other things, to construct waterworks, purchase by agreement or take on lease waterworks, or contract with any person for a supply of water, see title WATER SUPPLY. Such work, including as it does the breaking-up of highways for the purpose of laying water mains and pipes (as to which refer to title BREAKING-UP OF ROADS) usually involves contracts for the construction of the necessary works, and may impose certain liabilities on the local authority resulting either from their improper construction or a neglect to maintain them in proper condition. The principles of liability with regard to contractors are referred to *post*, p. 354, while compensation in case of damage (negligence apart) is provided for by sect. 278 of the P.H.A., 1936 (d). Negligence, that is want of proper care and skill, will give rise to an action for damages for resulting injury, and the principles governing negligence by companies have, in general, been applied by the courts to corporate bodies entrusted by statute with the performance of public duties. See, as to the necessary steps to be taken by a borough council to obtain evidence of leaks in their mains, *Manchester Corp'n. v. Markland* (e). [743]

*Street Lighting.*—By sect. 161 of the P.H.A., 1875 (f), a borough council or U.D.C. may light the streets, markets and public buildings, and several orders have been made by the M. of H. under sect. 276 of the same Act, giving rural district councils these powers.

The following are examples of actions for damages for negligence against local authorities in this connection. Where a vestry in London, having charge of the lighting of the parish, turned out some of the lights before daylight, and an accident occurred, it was held that the vestry had exercised their discretion to turn out the lights under sect. 180 of the Metropolis Management Act, 1855 (g), and were not liable either for nonfeasance or misfeasance (h). But in *Carpenter v. Finsbury Borough Council* (i) the question of discretion was considered to be immaterial and it was held to be a question of fact whether the statutory obligation had been complied with. In *Lamley v. East Retford Corp'n.* (k) the council had failed to light a lamp on a footpath which they were accustomed to light and were held liable for injuries to a

(u) *McClelland v. Manchester Corp'n.*, [1912] 1 K. B. 118; 38 Digest 129, 948.

(a) *Nash v. Rochford R.D.C.*, [1917] 1 K. B. 384; 26 Digest 405, 1272.

(b) [1964] 1 K. B. 319; Digest (Supp.).

(c) 29 Halsbury's Statutes 148.

(d) *Ibid.*, 242. See also *ante*, p. 347.

(e) (1935), 104 L. J. K. B. 480.

(f) 18 Halsbury's Statutes 692.

(g) 11 Halsbury's Statutes 917.

(h) *Young v. St. Mary's Islington Vestry* (1896), 60 J. P. 321; 26 Digest 393, 1193.

(i) [1920] 2 K. B. 195; 26 Digest 515, 2190.

(k) (1891), 55 J. P. 133; 26 Digest 390, 1171.

passenger. In a Scottish case (*l*) where a motor car had been damaged by collision with a tramway pylon bearing a red lamp which was not, however, lit at the time, it was held that no liability arose, as the standard of performance of their duty by a local authority could not be *absolute*, but must be in relation to the best means available of achieving exact performance of their duty. If every available means was taken, then the authority could not be held liable.

Where trustees of a public road were empowered and required by an Act to place lamps along a road and, should they think necessary, make contracts for cleaning them, and take a night-toll for the purpose of enabling them to light and watch them, and a pedestrian was injured by falling over a heap of scrapings left after cleaning, without lights, the duty to light was held to be discretionary and the authority were held not liable (*m*). Where, again, a carriage ran into a lamp-post at a dangerous point, failure to light the lamp was no evidence of negligence on the part of a local authority, as there was no statutory obligation cast upon them to light (*n*). (Further, as to the liability of local authorities, see title STREET LIGHTING.) [744]

*Miscellaneous Examples of Actions.*—A blind person was successful in obtaining damages from a corporation who were the water and highway authority, for injury caused by falling over an unprotected hydrant (*o*), but a child failed to recover (*p*). In this case, where the accident occurred in broad daylight, it was held that a child of five years of age may be guilty of contributory negligence (see *ante*, p. 348) if he does not take that care of himself which is to be expected of a child of that age. Where, under the Baths and Washhouses Act, 1846, washhouses had been erected, the property in the same being vested in the corporation, and plaintiff, who had paid to wash, was injured, it was held that the corporation, having undertaken a statutory duty to exercise ordinary care and diligence in providing machines reasonably safe for use, were liable for the injury sustained (*q*). As to alleged negligence on reinstatement of street works, and the question of liability, see *Hartley v. Rochdale Corp.* (*r*). [745]

Where there is negligence causing injury to a member (or voluntary helper) of a fire brigade, *e.g.* as a result of defective apparatus, the person injured may recover against the authority controlling the brigade. If the act complained of is that of another member of the brigade, the doctrine of common employment will apply (see title EMPLOYEES, RESPONSIBILITY FOR ACTS OF) (*s*). Apart from statutory liability, the obligations of local authorities engaged in trading enterprises are, of course, those of employer and servant (see title MUNICIPAL UNDERTAKING).

Damages were obtained against a local authority on behalf of a child who contracted small-pox owing to the negligent treatment of patients in a stable near a dwelling-house (*t*), but where diphtheria

(*l*) *Keogh v. Edinburgh Magistrates*, [1926] S. C. 814; Digest (Supp.).

(*m*) *Harris v. Baker* (1815), 4 M. & S. 27; 26 Digest 392, 1187.

(*n*) *Mellor v. Heywood Corp.* (1884), 48 J. P. Jo. 148; 20 Digest 392, 1183.

(*o*) *M'Kibbin v. City of Glasgow Corp.*, [1920] S. C. 590; 38 Digest 27, *d*.

(*p*) *Plantza v. Glasgow Corp.*, [1910] S. C. 786; 36 Digest 71, *q*.

(*q*) *Conley v. Sunderland Corp.* (1801), 80 L. J. Ex. 127; 38 Digest 17, 95. See also the cases cited in 38 Digest—"Public Authorities."

(*r*) [1908] 2 K. B. 594; 26 Digest 421, 1406.

(*s*) *Joyce v. Metropolitan Board of Works* (1881), 44 L. T. 811; 36 Digest 50, 352. See P.H.A. Amendment Act, 1907, s. 87; 13 Halsbury's Statutes 948.

(*t*) *Chapman v. Gillingham U.D.C.* (1908), *Times*, March 28; 38 Digest 198, 335.

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was contracted by a child who crawled through a fence into a hospital, an action was unsuccessful (*u*).

As to the non-liability of the council for the alleged negligence of an M.O. in discharging prematurely a hospital patient, see *Evans v. Liverpool Corporation* (*a*), or for the contraction by a patient in an infectious hospital of an additional infectious disease from other inmates, see *Vancouver General Hospital v. McDaniel* (*b*). For instances of actions for damages for negligence by school teachers in the employ of a local education committee, in connection with the use of chemicals, and during physical training, and negligence in connection with dangerous articles on school premises, see title ACCIDENTS. [746]

**Liability of Local Authorities for Contractors.**—The liability of a local authority as sewer, highway or water authority, for the negligent acts of a contractor employed by them, as well as for servants and licensees, is a matter of some complexity, but can be gathered from the cases collected in Lumley's Public Health, 10th ed., pp. 273, 274. The general principles emerging from a mass of legal decisions are briefly these. If a sanitary authority employ a contractor to do works, sect. 265 of the P.H.A., 1875 (*c*), which gives protection to sanitary authorities and their officers from personal liability, does not free him from the consequences of his own negligence, and where negligence on the part of a contractor is proved, the authority employing him are not liable if it can be shown that they have not in any way, by interference and so on, contributed to the wrongful acts committed by him. At the same time it has been held (*d*) that where a duty is imposed upon a public authority, the imperfect or improper performance of it by a contractor engaged by them does not excuse them. Consequently it follows that where a contractor is engaged by a local authority to carry out works entailing danger to the public, unless proper precautions are taken, the employing authority will be held liable if the contractor omits to take the necessary precautions. Thus, *inter alia*, a local authority have been held liable for the following negligent actions of contractors, viz: leaving a road improperly made up (*e*), trenches which were improperly filled in and rammed (*f*), negligently breaking pipes in the road (*g*) and leaving material unguarded or unlighted on the highway (*h*). On the other hand, for mere casual negligence on the part of a contractor's labourer, as, for instance, where he left a tool in the highway which led to injury to a passer-by, the local authority are probably not liable (*ibid.*). In this connection the distinction between a contractor and a servant must be considered, as to which see the cases cited below (*i*). [747]

Before a local authority can be fixed with liability for negligence,

- (*u*) *Sherwell v. Allon U.D.C.* (1909), 25 T. L. R. 417; 38 Digest 198, 345.
- (*a*) [1906] 1 K. B. 160; 36 Digest 107, 729.
- (*b*) (1934), 152 L. T. 50; Digest (Supp.). See also *Marshall v. Lindsey C.C.*, [1935] 1 K. B. 516; Digest Supp.
- (*c*) 18 Halsbury's Statutes 734. By s. 305 of the P.H.A., 1936 (20 Halsbury's Statutes 259), s. 265 of the P.H.A., 1875, is applied to the P.H.A., 1936. See also *ante*, p. 349.
- (*d*) See cases cited in Lumley's Public Health, 10th ed., pp. 586 of *seq.*
- (*e*) *Hill v. Tottenham U.D.C.* (1898), 79 L. T. 495; 26 Digest 404, 1268.
- (*f*) *Gray v. Pullen* (1864), 29 J. P. 69; 34 Digest 165, 1279.
- (*g*) *Hardaker v. Idle U.D.C.*, [1896] 1 Q. B. 335; 25 Digest 480, 62.
- (*h*) *Penny v. Wimbledon U.D.C.*, [1899] 2 Q. B. 72; 26 Digest 410, 1303.
- (*i*) *Steel v. S.E. Rail. Co.* (1855), 16 C. B. 550; 34 Digest 150, 1245. See also *Reddie v. L.N.W. Rail. Co.* (1840), 4 Exch. 244; 34 Digest 150, 1243, and *Burrows v. London (City) Sewers Commissioners* (1888), 4 T. L. R. 262; 26 Digest 401, 1253.

there must be established between the authority and the person who commits the tort, the relation of master and servant, in regard to the tort in question (*k*). An implied authority inferred from the nature of the agent's employment is sufficient, but where an act of an agent, purporting to be done with authority, is, in fact, done without it, a subsequent ratification may render the authority liable. Where a local authority by failure to carry out their statutory duties, cause injury to any person, their liability for the injury is dependent upon the terms of the particular enactment imposing the duty. On the other hand, where a duty is imposed upon the authority by common law, the authority are liable for a breach of the duty in the same way as an individual (*l*). [748]

**Public Authorities Protection Act, 1893.**—By sect. 1 of this Act (*m*), where any action, prosecution or other proceeding is commenced in the United Kingdom against any person for any act done in pursuance, or execution, or intended execution of any Act of Parliament, or of any public duty or authority, or in respect of any alleged neglect or default in the execution of any such Act, duty or authority, the action, prosecution or proceeding must be commenced within six months next after the act, neglect or default complained of, or, in case of a continuance of injury or damage, within six months next after the ceasing thereof.

This Act therefore provides a special protection to all public authorities in the execution of powers or duties under an Act of Parliament, *e.g.* in building a hospital or constructing sewers or water-works, and even where they are acting as a port health authority, a tramway authority, or electric light undertakers. The Act applies to the officers and servants of an authority acting under orders (*n*), but not to their contractors (*o*). As to the protection of a member or officer of a local authority from personal liability for acts done *bona fide* in virtue of his authority as a member or officer, see sect. 263 of the P.H.A., 1875 (*p*). [749]

(*b*) See 8 Halsbury's (2nd ed.), pp. 105—108.

(*l*) Further, as to the liability of a local authority in tort, see *ibid*.

(*m*) 13 Halsbury's Statutes 455.

(*n*) See *Greenwell v. Howell*, [1900] 1 Q. B. 535; 38 Digest 105, 751.

(*o*) *Tilling (T.), Ltd. v. Dick Kerr & Co.*, [1905] 1 K. B. 562; 38 Digest 108, 737.

(*p*) 13 Halsbury's Statutes 784.

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## NET ANNUAL VALUE

See VALUATION LIST.

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## NEW BUILDINGS

See BUILDING BYE-LAWS.

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## NEW ROADS

*See ROAD MAKING AND IMPROVEMENT.*

## NEW STREETS

*See PRIVATE STREETS ; ROAD MAKING AND IMPROVEMENT.*

## NEWSPAPERS

*See ADMISSION TO MEETINGS.*

## NOISE

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*See also titles :*

BYE-LAWS ;	NUISANCES ;
GOOD RULE AND GOVERNMENT ;	WIRELESS.
HIGHWAY NUISANCES ;	

### INTRODUCTORY

Noise may come within the category of nuisances, but it assumes so many forms that the general power of authorities to deal with nuisances is often not sufficient for them to deal with certain objectionable classes of noise. The noise which is the subject of this title includes only such noise as calls for prohibition or regulation by the police and the local authority. Both the power and the practice of these authorities in coping with noise nuisances are far from being uniform. Certain municipalities have obtained private Acts (e.g. the Lowestoft Corporation Act, 1984 (a)) which give them special powers, with the result that, within their jurisdiction, certain noise nuisances are dealt with as breaches of bye-laws or of police regulations,

(a) 24 & 25 Geo. 5, c. lxxv., s. 109 of which reads as follows:—“(1) A noise nuisance shall be liable to be dealt with in accordance with the provisions relating to nuisances of the Public Health Act, 1875. Provided that no complaint shall be

which, in other parts of the country, are left to be dealt with by the private action of individuals particularly affected. This unsatisfactory state of affairs has, in London, induced the Metropolitan Boroughs Standing Joint Committee to express its readiness to support the promotion of legislation for London "on the lines of sect. 109 of the Lowestoft Corporation Act, 1934," and the L.C.C. has decided to promote legislation, in the session 1936-37, "to extend to nuisances occasioned by noise in the Administrative County of London the provisions relating to the abatement of nuisances in the Public Health Code for London, and in connection therewith to provide a suitable definition of noise nuisance (b). [750]

#### AUTHORITIES

Noise falls within three categories, according to the legislation under which proceedings may be taken, namely: (a) noise coming under specific sections of Police Acts or of Acts giving the police power of arrest without warrant; (b) noise in contravention of by-laws of local authorities; (c) noise from motor traffic dealt with by the Road Traffic Acts and Regulations of the Minister of Transport. [751]

(a) *Police*.—Although the police may ultimately have to deal with contraventions in connection with any of the above categories of noises, there are certain kinds of noises with which they have been given by Parliament direct powers to deal and with regard to which they have authority to arrest without warrant any person committing the offence within view of a constable. The penalty is generally "a fine not exceeding forty shillings."

For instance, under the Metropolitan Police Act, 1839 (c), the police have the powers indicated above in the case of a person "who shall blow any horn or use any other noisy instrument for the purpose of calling persons together or of announcing any show or entertainment, or for the purpose of hawking, selling, distributing or collecting any article whatsoever or of obtaining money or alms." The King's Bench Divisional Court has held on appeal that the use of a loud-speaker from a travelling van to call attention to the programme of a local theatre is an offence under this section (d).

Under the Town Police Clauses Act, 1847 (e), the police have similar powers in the case of persons discharging fire-arms or causing disturbance by pulling or ringing door-bells or knocking at doors. Under the Chimney Sweepers Act, 1894 (f), they have similar powers

made under s. 105 of the said Act unless it is signed by not less than three householders or occupiers of premises within hearing of the noise nuisance complained of. (2) For the purpose of this section a noise nuisance shall be deemed to exist where any person makes or continues or causes to be made or continued any excessive or unreasonable or unnecessary noise and where such noise (a) is injurious or dangerous to health and (b) is capable of being prevented or mitigated having due regard to all the circumstances of the case. Provided that if a noise is occasioned in the course of any trade, business or occupation it shall be a good defence that the best practicable means of preventing or mitigating it, having regard to the cost, have been adopted. (3) Nothing in this section shall apply to the company or other service exercising statutory powers."

(b) Report of General Purposes Committee, July 20 and 27, 1936.

(c) S. 54; 19 Halsbury's Statutes 119.

(d) Appeal of R. J. Adams against conviction by Mr. Mullins, South Western Police Court Magistrate. (HEWART, L.C.J., HUNPHREYS and SINGLETON, J.J.) Reported in *Daily Telegraph*, October 19, 1935.

(e) S. 28; 19 Halsbury's Statutes 38. (f) S. 1; 13 Halsbury's Statutes 870.

## NEW ROADS

*See ROAD MAKING AND IMPROVEMENT.*

## NEW STREETS

*See PRIVATE STREETS ; ROAD MAKING AND IMPROVEMENT.*

## NEWSPAPERS

*See ADMISSION TO MEETINGS.*

## NOISE

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in the case of chimney sweepers ringing bells or knocking to advertise their presence in a neighbourhood. Similarly under the Metropolitan Paving Act, 1817 (g), the police can take immediate action in cases of carpet beating in the street or rolling barrels or casks on the pavements, but in this case the abatement contemplated was probably that of a nuisance which was not primarily a noise nuisance.

The position as regards noise by street singers and musicians is on a different footing and as regards London is regulated by sect. 1 of the Metropolitan Police Act, 1864 (h), under which the police can act only on the complaint of an aggrieved householder who must sign the charge sheet at the police station. Street music and street singing, although in most cases barely colourable excuses for begging, seem nevertheless to be put by the Act into the category of private grievances instead of public nuisances. The section reads as follows: "Any householder . . . may require any street musician or street singer to depart from the neighbourhood of the house of such householder on account of the illness or on account of the interruption of the ordinary occupations or pursuits of any inmate of such house or for other reasonable or sufficient cause," and on refusal "it shall be lawful for any constable to take into custody without warrant any person who shall offend as aforesaid; provided always that he shall be given into custody by the person making the charge" and that such person "shall accompany the constable . . . to the nearest police station and there sign the charge sheet kept for such purpose." [752]

(b) **Municipal Bye-Laws.**—As an instance of the noises which have been prohibited by bye-laws of municipal authorities the following bye-laws made by the L.C.C. may be referred to:

*Noisy Animals* (July 19, 1898).—Prohibition to keep noisy animals causing a serious nuisance to residents in the neighbourhood. A fortnight's notice alleging the nuisance and signed by at least three householders residing within hearing of the animal must be given. Such a bye-law has been held to be enforceable at the suit of a private individual (i).

*Street Shouting* (February 6, 1900).—Prohibition to shout in streets for purposes of hawking or of selling or advertising newspapers. In *Innes v. Newman* (k), a similar bye-law seems to have been considered enforceable if the nuisance was to the "annoyance of any one of the inhabitants" without necessity to show annoyance of a reasonable number.

*Organs in Connection with Roundabouts, etc.* (March 28, 1911).—Prohibition to make "any loud and continuous noise by means of any organ or other similar instrument to the annoyance of residents or passengers" in connection with any roundabout, show, exhibition or performance placed or held in any street or on any vacant ground adjoining or near to a street.

*Whistling for Cabs* (July 27, 1920).—Prohibition to blow any whistle or other noisy instrument in any street or public place or on any premises adjoining or near thereto, for the purpose of hailing cabs, carriages or other vehicles.

*Ringling of Alarm Bells* (January 26, 1932).—The occupier of any house, building or premises is liable on conviction to a penalty not

(g) S. 64; 11 Halsbury's Statutes 854.

(h) 19 Halsbury's Statutes 153.

(i) Anon., 43 Sol. J., 71.

(k) [1894] 2 Q. B. 292; 38 Digest 160, 118.

exceeding £5 "if any alarm bell or other similar instrument or apparatus fixed or installed in or in connection therewith, and so designed and constructed as to operate automatically, causes a prolonged ringing or continuous noise so as to cause annoyance to the inhabitants of the neighbourhood." In order to constitute an offence under the bye-law, the ringing must exceed ten minutes within the City and five minutes elsewhere in the County of London, either as a continuous period or as an aggregate period in the course of half an hour. The bye-law does not apply to fire alarms. [753]

(c) **M. of T. Regulations.**—The nuisance arising from traffic noises, motor horn blowing, and motor vehicles of defective design or construction or inadequately maintained or carrying loads inefficiently packed, came under the consideration of a conference of various authorities interested, summoned at the instance of the M. of T., whose recommendations (l) led to the noise abatement provisions in the Road Traffic Acts of 1980 and 1984 (m), and the regulations made by the Minister thereunder.

The most important of those regulations are contained in the Motor Vehicles (Construction and Use) Regulations of March 24, 1987 (n), which provide, among other things, that (a) every motor vehicle (except cycles and cranes) and every trailer shall be equipped with springs (art. 8); (b) every vehicle propelled by an internal combustion engine shall be equipped with a silencer (art. 19); (c) tyres shall be of soft or elastic material (art. 26) and pneumatic tyres shall be fitted to every heavy motor car (art. 35) and to every motor car the unladen weight of which exceeds 1 ton (art. 40) and motor cycle (art. 43) and trailer (art. 51); (d) no vehicle shall be used on the road with any defect of design or construction or lack of repair or faulty adjustment, or carrying loads with faulty packing or adjustment, so as to cause, directly or indirectly, any excessive noise (art. 75); (e) no motor vehicle shall be used so as to cause excessive noise which could be avoided by use of reasonable care by the driver (art. 76); (f) engine is to be stopped when vehicle is stationary, otherwise than on account of temporary stoppage by traffic (art. 77); (g) no motor horn is to be used by stationary vehicle (art. 79).

By a regulation of August 23, 1984, a silence zone was created whereby the blowing of motor horns or the use of any instrument fitted to a motor vehicle for signalling its approach by sound, was prohibited between 11.30 p.m. and 7 a.m. on any road within 5 miles from the King Charles statue at Charing Cross (fire brigade vehicles, ambulances and police cars excepted). This prohibition was extended by an amending order of August 31, 1984 (o), to "any road on which there is provided a system of street lighting furnished by means of lamps placed not more than 200 yards apart," and the provision is now contained in art. 78 of S.R. & O., 1987, No. 229. [754]

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(l) Report of Conference on Road Traffic Noises, February 26, 1920. Reference should also be made to the Reports of the Departmental Committee on Noise in the Operation of Mechanically Propelled Vehicles (1st interim, August 31, 1935; 2nd interim, July 8, 1936).

(m) S. 30 of the Act of 1980; 23 Halsbury's Statutes 633 and s. 9 of the Act of 1984; 27 Halsbury's Statutes 543.

(n) S.R. & O., 1987, No. 229.

(o) Motor Vehicles (Construction and Use) (Amendment No. 2) Provisional Regulations, 1984.



## NOISE NUISANCES NOT SUBJECT TO REGULATIONS

Except in cases specially provided for by Parliament, the public as such has no remedy and is not protected against nuisance by noise. Its only hope is that some private person or persons may be sufficiently annoyed or injured to go to the expense of starting legal proceedings and applying for an injunction to abate the noise from which a whole thickly populated neighbourhood is suffering, to an extent which may at least be mitigated. It is understood that one of the objects of the legislation which the L.C.C. and the Metropolitan Boroughs Standing Joint Committee are contemplating will be the regulation of noise from plant and machinery in business premises where work is carried on during the night and early morning. A hope may be expressed that it may ultimately be possible to obtain regulations to minimise noise from demolition and building operations on a large scale. As it is obviously possible to carry on such operations, after an injunction has been granted, under conditions which make the noise therefrom tolerable, it is difficult to see any adequate reason why regulations should not be made for the enforcement of those conditions from the very commencement of the work and why the public should be unnecessarily victimised until some private person obtains an injunction. Another kind of noise which also seems to call for some form of regulation is that which arises from the use of pneumatic drills for long periods over stretches of roadway requiring to be broken up, either for the purpose of road reconstruction or relaying by contractors to highway authorities or for mains alterations by statutory undertakers. Reference might be made to *Valpey v. Earls Court, Ltd.* (p) and *Peters v. Willment Bros.* (q) and particularly to the remarks of LUXMOORE, J. in the latter case in granting an injunction against the use of pneumatic drills. Some local authorities have recently experimented with pneumatic drills fitted with silencers. It is understood that these drills are considerably quieter in operation than the usual models. [755]

## INTENTION AS A FACTOR

The effect of intention in the making of noises, a remedy for which is sought in an injunction or in damages, or both, has been fully discussed in *Hollywood Silver Fox Farms, Ltd. v. Emmett* (r). [756]

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(p) *The Times*, May 28, 1936.

(q) *The Times*, November 24, 1936.

(r) [1936] 2 K. B. 468; 1 All E. R. 825; Digest (Supp.).

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## NOISY ANIMALS

*See ANIMALS, KEEPING OF.*

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# NOMINATION

See ELECTIONS.

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COUNTY BOROUGH ;  
COUNTY OF A CITY OR TOWN ;  
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MUNICIPAL CORPORATIONS ;  
QUARTER SESSIONS BOROUGHES.

**Meaning.**—As indicated in the title MUNICIPAL CORPORATIONS, the term “municipal borough,” when used in an Act passed after 1889 means a place to which the Municipal Corporations Act, 1882, applies. On p. 148 of Vol. IV., it has been shown that by sect. 31 of the L.G.A., 1888 (a), certain of the largest of these towns were constituted county boroughs, and that other county boroughs have since been constituted by provisional order or local Act. The term “non-county borough,” is applied to those municipal boroughs which have not acquired a county borough status, but before the L.G.A., 1929, the term was not commonly used in Acts of Parliament. In the P.H.A., 1875, “urban district” by sect. 6 of the Act (b) included a borough as well as an Improvement Act district and the district of a local board, and by sect. 21 (3) of the L.G.A., 1894 (c), the phrase “county district,” when used in any later Act, included every urban and rural district whether a borough or not. Similarly “district council” was to include the council of every urban district, whether a borough or not, and of every rural district. Thus in the Factory and Workshop Act, 1901, “district council” includes a non-county borough council (d). In sect. 1 (1) of the R. & V.A., 1925 (e), the council of a non-county borough was created

(a) 10 Halsbury's Statutes 708.

(b) 13 Halsbury's Statutes 628.

(c) 10 Halsbury's Statutes 792.

(d) As to the inclusion of a county borough, see Vol. II., p. 148.

(e) 14 Halsbury's Statutes 617.

the rating authority, as being the council of an urban district. But in the definition of "district" in sect. 184 of the L.G.A., 1929 (*f*), the phrase "non-county borough" is used, and "district" is defined for that Act as meaning "county district, that is to say, a non-county borough or other urban district or a rural district." [757]

By sect. 1 of the L.G.A., 1933 (*g*), England and Wales is divided for the purposes of local government into administrative counties and county boroughs, and administrative counties are sub-divided into county districts, which are either non-county boroughs, urban districts or rural districts, and county boroughs and county districts are to consist of one or more parishes. By sect. 305 (*h*) "county district" is defined as a non-county borough, urban district or rural district, but "district council" as an U.D.C. or a R.D.C., and the definitions of "district council" and "county district" in sect. 21 (*3*) of the L.G.A., 1894, already referred to, were repealed as respects future Acts. The use of the phrase "district council" as including a borough council will presumably be discontinued in Acts of Parliament. Part III. of the First Schedule to the L.G.A., 1933 (*i*), gives a list of the non-county boroughs at the passing of that Act, and these are added to year by year as certain of the larger urban districts obtain charters of incorporation as boroughs. [758]

When, by the L.G.A., 1888, county boroughs were distinguished for the purposes of administration from non-county boroughs, the position of the county councils in relation to the latter was set out in sects. 35—89 of that Act (*k*), where they were divided into (1) quarter sessions boroughs (*l*) with a population of 10,000 or over according to the census of 1881 (sect. 35); (2) quarter sessions boroughs with a population of under 10,000 (sect. 38); (3) boroughs with a separate commission of the peace, whether or not quarter sessions boroughs (sect. 36); and (4) all boroughs with a population of less than 10,000 (sect. 89). Their various powers and duties are dealt with later.

The simplest method of classifying non-county boroughs is to group them into boroughs (1) with a separate court of quarter sessions, (2) with a separate commission of the peace, and (3) with neither a separate court of quarter sessions nor commission (*m*). But, as indicated on p. 194 of Vol. IV., the non-county boroughs of Berwick-upon-Tweed, Lichfield, Poole, Haverfordwest and Carmarthen are "counties of towns," and occupy a special position for the purposes of quarter sessions and justices. [759]

**Constitution and Functions.**—The constitution of a non-county borough council is the same as that of a county borough council and is governed by sects. 17 to 30 of the L.G.A., 1933 (*n*), as described in the titles COUNTY BOROUGHs at pp. 149, 150 of Vol. IV. and MUNICIPAL CORPORATIONS. The meetings and proceedings of both classes of

(*f*) 10 Halsbury's Statutes 971.

(*g*) 26 Halsbury's Statutes 806.

(*h*) *Ibid.*, 468.

(*i*) *Ibid.*, 471—479.

(*k*) 10 Halsbury's Statutes 718—717.

(*l*) See title QUARTER SESSIONS BOROUGHs.

(*m*) On the petition of the borough council, His Majesty may grant to the borough a separate commission of the peace under sect. 156 of the Municipal Corpn. Act, 1882, or a separate court of quarter sessions under sect. 102 of that Act; 10 Halsbury's Statutes 627, 629.

(*n*) 26 Halsbury's Statutes 313—320.

borough councils are regulated by sect. 75 and Parts II. and V. of the Third Schedule to the L.G.A., 1933 (*o*), and both county borough councillors and non-county borough councillors are elected in the same manner (*p*). As regards the qualification and disqualification of members of the council, the disqualification imposed by sect. 59 (1) (*h*) of the L.G.A., 1933 (*q*), of a paid poor law officer or a dismissed poor law officer does not extend to a member of a non-county borough council, but apart from this point the provisions in sects. 57 to 59 of the Act as to qualification and disqualification apply to both classes of borough council, as do sects. 61 to 68 of the Act (*r*), which relate to acceptance of office, resignation, failure to attend meetings and casual vacancies and the miscellaneous provisions in sects. 69 to 74 and 79 to 84 of the Act (*s*). The disability in sect. 76 for voting, on account of interest in a contract, proposed contract or other matter, also applies to both classes of council. [760]

As respects functions, a non-county borough council do not, of course, exercise those functions of a county council which were given to county borough councils by sect. 34 of L.G.A., 1888 (*t*), but by sect. 249 of the L.G.A., 1933 (*u*), the council have the right to make bye-laws for good rule and government and the suppression of nuisances and bye-laws made by a county council have no effect in a borough. Both the non-county borough and the county borough council may have the system of audit by borough auditors provided for in sect. 237 of the Act of 1933 (*a*), unless they have adopted district audit or professional audit under sect. 239 of the Act or a local Act or provisional order. The promotion of a Bill by a non-county borough council or by a county borough council is subject to the approval of the local government electors under the Ninth Schedule to the Act (*b*).

The powers under the Act of 1933 of a non-county borough council as regards the levy of rates (*c*) are the same as those of a county borough council and also those in regard to the ownership of corporate land (*d*), and the provisions as to freemen (*e*). The officers of non-county boroughs are the same as those of county boroughs (*f*). Provisions as to justices, stipendiary magistrate and the recorder will be found in Part VIII. of the Municipal Corporations Act, 1882 (*g*). The reviews of areas by county councils in regard to non-county boroughs and the alteration of boundaries are dealt with in the title ALTERATION OF AREAS. [761]

**Non-County Boroughs under L.G.A., 1888.** *Larger Quarter Sessions Boroughs.*—By sect. 85 of the L.G.A., 1888 (*h*), quarter sessions boroughs which had a population at the census of 1881 of 10,000 or upwards

(*o*) 26 Halsbury's Statutes 346, 497, 500. See title MEETINGS.

(*p*) See s. 29 and Sched. II.; 26 Halsbury's Statutes 319, 474—495.

(*q*) 26 Halsbury's Statutes 334.

(*r*) *Ibid.*, 337—343.

(*s*) *Ibid.*, 343—346, 349—352.

(*t*) 10 Halsbury's Statutes 711.

(*u*) 26 Halsbury's Statutes 439.

(*a*) *Ibid.*, 433.

(*b*) See s. 255; 26 Halsbury's Statutes 444, 510.

(*c*) Ss. 185—187; 26 Halsbury's Statutes 407, 408.

(*d*) Ss. 171—172; *ibid.*, 400, 401. See title CORPORATE LAND.

(*e*) Ss. 259—265; *ibid.*, 445—447. See title FREEDOM OF CITY OR BOROUGH.

(*f*) Ss. 106; *ibid.*, 361. See title MUNICIPAL CORPORATIONS.

(*g*) 10 Halsbury's Statutes 626—636.

(*h*) *Ibid.*, 713.

form part of the county and the parishes in the borough are liable to be assessed to county contributions, but no power as local authority under any Act was transferred by that Act from the borough council to the county council, nor unless expressly mentioned in the Act of 1888, was any power, duty or liability of the council of the borough under the Municipal Corporations Act, 1882, altered. If any such borough was exempt, however, at the passing of the Act of 1888, from contributing to any costs incurred by the county quarter sessions for any purposes, the parishes in the borough were not to be assessed in regard to such costs (unless as expressly mentioned in the Act of 1888), or in the case of a partial exemption, to be assessed for more than their existing share, but the exemptions were not to extend to any costs incurred in connection with the functions of the justices of the borough to be exercised by the county council, or to the costs of or incidental to the county assizes. By sect. 35 (3) the borough was to form part of the county in regard to main roads and the cost of maintaining, repairing, improving, enlarging or otherwise dealing with any main road in the borough was to be paid out of the county fund, and to be a general county purpose for which the parishes of the borough might be assessed to county contributions. By sect. 29 (4) of the L.G.A., 1929 (i), it is further provided that no borough is to be exempt from contributing towards the costs incurred by a county council for the purposes of the maintenance, repair and improvement of, or other dealings with bridges, and the liability of the borough council for any borough bridge carrying a county road was transferred to the county council. By sect. 35 (4) (5) of the Act of 1888 (k) the council of this type of borough had power to claim to retain the powers and duties of maintaining and repairing any main road in the borough (l), and the payment of the costs of assizes and sessions are general county purposes for which the parishes in the borough may be assessed to county contributions. Under sect. 35 (7) the county council and the council of such a borough may agree for the cessation in whole or in part of any exemption in consideration either of a capital or of an annual payment, or of a transfer of properties or liabilities or of the county council undertaking any powers or duties of the borough in substitution. [762]

*Smaller Quarter Sessions Boroughs.*—By sect. 38 of the L.G.A., 1888 (m), quarter sessions boroughs which had a population at the census of 1881 of under 10,000 also form part of the county and are subject to the authority of the county council and the parishes in the borough are liable to county contributions, while the following functions of the council and justices of the borough were also transferred to the county council: (i.) as to the provision of asylums for pauper lunatics (n), (ii.) as to coroners (o) and the appointment of analysts, (iii.) in regard to reformatory and industrial schools, fish conservancy, and explosives, and (iv.) powers in regard to the maintenance of main roads (p). It was decided in *Thetford Corporation v. Norfolk County Council* (q) that

(i) 10 Halsbury's Statutes 908.

(k) *Ibid.*, 714, 715.

(l) This is now superseded and a population of over 20,000 is necessary, see s. 32 of the L.G.A., 1929; 10 Halsbury's Statutes 906, and generally the titles on HIGHWAYS.

(m) 10 Halsbury's Statutes 716.

(n) See now title MENTAL HOSPITALS.

(o) See title CORONERS.

(p) See notes (h) and (i), *ante*.

(q) [1898] 2 Q. B. 468; 33 Digest 380, 396.

the county council are not liable under this section for the payment of the salary of the recorder, the fees of the clerk of the peace for the borough or the salary of the clerk of the borough justices. [763]

*Small Boroughs.*—By sect. 39 of the L.G.A., 1888 (r), in all boroughs with a population under 10,000 at the census of 1881, all functions of the borough council in relation to (i.) the borough police force (s), (ii.) the appointment of analysts (t), (iii.) the execution of the Destructive Insects Act, 1877 (u), (iv.) gas meters (a), weights and measures (b), and explosives (c) were transferred to the county council. Powers under the Contagious Diseases (Animals) Act, 1878 (d), were, however, not transferred. [764]

*Boroughs with a Separate Commission.*—The effect of sect. 36 (e), in which boroughs with a separate commission are dealt with, is not easy to follow. The section applies whether the borough has or has not a separate court of quarter sessions, but its application is "subject to the provisions of this Act." Apparently this means that if on referring to sect. 35, 38 or 39, one finds that the quarter sessions or justices of a particular borough are to retain or relinquish to the county council a given power, this concludes the question and sect. 36 does not alter the position so arrived at. The operation of the sections seems, therefore, to be restricted to boroughs with a population of 10,000 or upwards with a separate commission, but without a separate court of quarter sessions, and boroughs with such a court as respects powers which are not covered by sect. 35, 38 or 39. If powers of the justices in court of quarter sessions pass to the county council, e.g. under sect. 3 of the Act, then the transfer is to apply to the borough. [765]

*Non-County Boroughs under other Statutes.*—The question whether a non-county borough council are the authority under a given statute can only be ascertained by an examination of the statute, and the various definitions of "district" have complicated the matter. It will be useful, therefore, to give under different subject-matters the status of a non-county borough council in regard to them. [766]

*Highways.*—By sect. 31 of the L.G.A., 1929 (f), all classified roads in urban districts were transferred to the county council and became county roads, and by sect. 134 (g) "district" includes a non-county borough or other urban district. By sect. 32 the council of an urban district, which again includes a non-county borough, with a population of over 20,000 may claim to exercise the functions of maintenance and repair of county roads, at various dates prescribed by the section. As regards non-classified roads, the non-county borough council remain in any case the highway authority. Where, therefore, in other

(r) 10 Halsbury's Statutes 717.

(s) See titles BOROUGH POLICE, COUNTY POLICE.

(t) See now Food and Drugs (Adulteration) Act, 1928, s. 13; 8 Halsbury's Statutes 893.

(u) Extended by the Destructive Insects and Pests Acts of 1907 and 1927; 1 Halsbury's Statutes 69, 164.

(a) See title GAS.

(b) See title WEIGHTS AND MEASURES.

(c) See Explosives Act, 1875; 8 Halsbury's Statutes 885 *et seq.* with amendments.

(d) Replaced by the Diseases of Animals Act, 1894; 1 Halsbury's Statutes 389.

(e) As to the local authorities under this Act, see Vol. I, p. 395.

(f) 10 Halsbury's Statutes 715.

(g) *Ibid.*, 905.

(h) *Ibid.*, 971.

Acts, such as the Restriction of Ribbon Development Act, 1935 (*h*), the term "highway authority" is used, the council of a non-county borough may be such an authority as regards some roads, but not as regards others: see sect. 18 of that Act. Reference should also be made to the Trunk Roads Act, 1936 (*i*). [767]

*Protection of Rights of Way, etc.*—By sect. 26 of the L.G.A., 1894 (*j*), every district council, which by sect. 21 of that Act includes a non-county borough council, have the duty of protecting public rights of way, rights of common and roadside wastes, and by sect. 18 (1) of the Act (*k*), the consent of the council of a non-county borough is necessary for the stopping up, or diversion of a public right of way. [768]

*Public Health and Housing.*—At *ante*, p. 361, it has been explained that in the P.H.A., 1875, "urban district" includes a borough. The powers, therefore, given to "urban authorities" by that Act are given to all borough councils. Other names given by sect. 5 of the P.H.A., 1875 (*l*), are those of sanitary district and sanitary authority, and wherever these terms are used a non-county borough and its council are included. For the purposes of the P.H.A., 1936, the expression "local authority" includes the council of a borough, "urban authority" includes the council of a borough and "district" in relation to the local authority of a borough, means the borough (sect. 1 (2) (*m*)).

The local authorities for the purposes of the Housing Act, 1936, include borough councils (*n*). [769]

*Maternity and Child Welfare and Midwives.*—By sect. 2 of the Notification of Births Act, 1907 (*g*), any borough council could adopt that Act, but at the present time the question whether any particular council of a non-county borough is a maternity and child welfare authority depends on whether the Act had been adopted by the county council when the Notification of Births (Extension) Act, 1915 (*r*), came into force, and whether an order has been made by the M. of H. under sect. 60 of L.G.A., 1929 (*s*). See title MATERNITY AND CHILD WELFARE.

By sect. 8 of the Midwives Act, 1902 (*t*), only county and county borough councils are to be the authorities for supervising midwives, but by sect. 62 of the L.G.A., 1929 (*u*), this duty may be transferred by the Minister to a maternity and child welfare authority (*w*). [770]

*Education.*—See title EDUCATION AUTHORITY in Vol. V.

*Poor Law.*—By sect. 2 of the Poor Law Act, 1930 (*a*), the local authorities for the administration of the poor law are the county and county borough councils, but by sect. 5 of the Act guardians committees are to act in counties for areas consisting of one or more county dis-

(*h*) 28 Halsbury's Statutes 275.

(*i*) 29 Halsbury's Statutes 184.

(*j*) 10 Halsbury's Statutes 795.

(*k*) *Ibid.*, 785.

(*l*) 13 Halsbury's Statutes 627.

(*m*) 29 Halsbury's Statutes 322.

(*n*) S. 1 (1); 29 Halsbury's Statutes 565.

(*g*) 15 Halsbury's Statutes 766. If the council of the borough were the maternity and child welfare authority immediately before the commencement of the P.H.A., 1936, they continue to be so by s. 200 (29 Halsbury's Statutes 460).

(*r*) *Ibid.*, 767.

(*s*) 10 Halsbury's Statutes 924.

(*t*) 11 Halsbury's Statutes 732. See title MIDWIVES.

(*u*) 10 Halsbury's Statutes 925.

(*w*) For provisions of the Midwives Act, 1936, see title MIDWIVES.

(*a*) 12 Halsbury's Statutes 969.

tricts. A non-county borough may, therefore, have an entire guardians committee or be combined with some other county district for this purpose. [771]

*Children and Young Persons.*—By sect. 96 of the Children and Young Persons Act, 1933 (*b*), the local authority as respects children under that Act are the local authority of the area for elementary education, and may therefore be a non-county borough council in certain cases (*c*). With regard to young persons, the local authority is the county or county borough council, but a child who has been ordered to be sent to an approved school or to be committed to the care of a fit person, remains on reaching the age of fourteen years under the care of the local authority for elementary education. [772]

*Road Traffic.*—The highway authority, for the purposes of the Road Traffic Act, 1930 (*d*), is defined in sect. 121 as meaning in relation to a road the authority being either the council of a county, the council of a county borough, or the council of an urban district which is responsible for the maintenance of the road, thus including the council of a non-county borough as an urban district relative to any road maintained by that council. [773]

*Advertisement Regulation.*—By sect. 7 of the Advertisements Regulation Act, 1907 (*e*), local authorities, who may make bye-laws for the regulation of advertisements, include the councils of all boroughs. [774]

*Rating.*—By sect. 1 (1) of the R. & V.A., 1925 (*f*), rating authorities include the council of every county borough and of every urban and rural district, and as indicated *ante*, p. 361, a non-county borough is here included as being an urban district. [775]

*Factory and Workshop Acts.*—Powers as to sanitary defects in factories or workshops are by sect. 5 of the Factory and Workshop Act, 1901 (*g*), imposed on "district councils," and by sects. 14 and 15 (*h*) the means of escape from fire in factories and workshops must be supervised by the district council, and bye-laws may be made. By virtue of sect. 21 (3) of L.G.A., 1894, "district council" includes a non-county borough council, and is extended to a county borough council by sect. 154 of the Act (*i*). [776]

(*b*) 26 Halsbury's Statutes 232. See title INFANTS, CHILDREN AND YOUNG PERSONS.

(*c*) See *ante*, p. 366.

(*d*) 23 Halsbury's Statutes 686. See title TRAFFIC CONTROL.

(*e*) 13 Halsbury's Statutes 909.

(*f*) 14 Halsbury's Statutes 617.

(*g*) 8 Halsbury's Statutes 520.

(*h*) *Ibid.*, 525, 527.

(*i*) *Ibid.*, 597.

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## NON-FEASANCE

See MISFEASANCE AND NON-FEASANCE.

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## NON-PROVIDED SCHOOLS

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*See also titles :*

BOARD OF EDUCATION ;  
EDUCATION ;  
EDUCATION COMMITTEE ;

ELEMENTARY EDUCATION ;  
TEACHERS.

**Introduction.**—This article will deal with the administration of non-provided schools, that is, of schools the expenses of which are to the extent laid down by the Education Acts a charge on the funds of a local education authority, although the buildings have not been provided by the latter.

The buildings and other school premises of non-provided schools are usually vested in trustees, the funds for acquiring them having generally been provided by one of the religious denominations, although there are some non-provided schools which are undenominational. [777]

**Management.**—Although non-provided schools can be grouped for the purpose of management (*a*), it is more general to find one body of managers for each school. The expression "managers" includes all persons who have the management of the school, whether the legal interest in the schoolhouse is or is not vested in them (*b*).

All public elementary schools which are not provided by a local education authority (*c*) must have a body of managers consisting (subject to what is said below) of not more than six managers—four foundation managers and two other managers. If the local education authority is a county council, then one of the other managers will be appointed by the county council and the other by the minor local authority (*d*). A minor local authority means the council of any borough, urban district or parish council or parish meeting of any parish which appears to the county council to be served by the school (*e*). Where the local education authority are the council of an urban district or a borough, then both these managers are appointed by that authority.

(*a*) The Education Act, 1921, s. 33 ; 7 Halsbury's Statutes 148.

(*b*) For definitions of "managers" and "schoolhouse" see s. 170 (6) and (10) ; 7 Halsbury's Statutes 213.

(*c*) Education Act, 1921, s. 30 (2) ; 7 Halsbury's Statutes 146.

(*d*) *Ibid.*, s. 30 (2).

(*e*) *Ibid.*, s. 170 (15).

Although in normal circumstances a body of six managers is sufficient, the Act makes provision for a larger number, where the local education authority consider this necessary. Whatever the number of managers the proportions in each class mentioned above must be maintained (*f*). [778]

It has been stated above that whatever the total membership of any body of managers of a non-provided school may be, two-thirds of them must be foundation managers (*g*). Foundation managers are those appointed under the provision of a trust deed of the school or under an order made in pursuance of the Education Act, 1921 (*h*), or of sect. 11 of the Education Act, 1902, or under the trust deed of the school as modified by any such order (*k*).

The Board of Education still have power to make orders as to the appointment of foundation managers (*l*), and they may also revoke, vary or alter such an order on the application of the managers of the school, the local education authority or any person appearing to the Board of Education to be interested in the school (*m*). When an application of this kind is made, notice, together with a copy of the final order it is proposed to make, must be given by the Board of Education, to the local education authority and to the owners, trustees and managers of the school, as well as to any other person whom the Board of Education consider to be interested. The final order must not be made until six weeks after this notice has been given (*n*). The Board of Education may, however, if they think that the circumstances of the case require it, make an interim order which will have temporary effect until the final order is made (*o*). [779]

It is strange, perhaps, that the Act contains no statement as to the duration of the period for which managers, whether appointed by the local education authority, the minor authority or as foundation managers, may be appointed. There is a provision, however, to the effect that a manager of a non-provided school who is appointed by the local education authority or the minor local authority may resign or be removed by the authority who appointed him (*p*). The practice of some local education authorities is to appoint managers annually as from April 1, or, in municipal boroughs, as from November 9. [780]

**Premises. Managers' Duty.**—The schoolhouse must be provided by the managers free of charge (*q*), and here the expression "schoolhouse" includes the playground (if any), the offices and all premises belonging to or required for a school (*r*). The managers are not, however, under an obligation to provide a teacher's dwelling-house free of charge, and if there is such a house as part of the premises, the payment of rent by the head teacher—or other occupier—is a matter for the managers and is not the concern of the local education authority. The duty of providing the schoolhouse without charge to the local education authority includes the payment by the managers of any such charges as taxes, ground rent, tithe commutation rent charge, etc.

(*f*) Education Act, 1921, s. 30 (5) (*h*).

(*g*) *Ibid.*, s. 30 (2); 7 Halsbury's Statutes 146.

(*h*) *Ibid.*, s. 31.

(*k*) Education Act, 1921, s. 31 (1); *ibid.*, 147.

(*l*) *Ibid.*, s. 32 (1).

(*m*) *Ibid.*, s. 32 (3).

(*p*) Sched. III, para. (4); 7 Halsbury's Statutes 230.

(*q*) Education Act, 1921, s. 29 (2) (*d*); 7 Halsbury's Statutes 144.

(*r*) *Ibid.*, s. 170 (6).

(*n*) *Ibid.*, s. 32 (2).

(*o*) *Ibid.*, s. 32 (4).

In regard to rates, provision is made (s) whereby no person shall be assessed or rated to or for any local rates on any buildings or land used exclusively or mainly for the purposes of the schoolrooms, offices or playground of a non-provided public elementary school. This exemption does not apply to any profits derived by the managers from the letting of any of the premises (t).

When school managers or any other person propose, subject to the approval of the Board of Education, to provide a new non-provided school, the same procedure relating to the giving of public notice has to be followed as in the case of a provided school (u).

A non-provided school (that which is colloquially referred to as the "school") is in the Education Acts termed the "schoolhouse," and includes the teacher's house, the playground, the offices and the premises belonging to or required for the school (a), and, excepting the teacher's house, they must be provided by the managers free of charge. They must also, out of their own funds, make any alterations or improvements in the buildings that the local education authority may reasonably require (b).

It should be noted that the managers' obligation is to alter and improve the buildings. The playground may be improved by the local education authority (c). [781.]

A local education authority may for the benefit of senior children (i.e. children who have attained the age of eleven years) enter into an agreement with persons authorised by the managers of a non-provided school for the enlargement or improvement of the school, or with persons proposing to provide a new public elementary school for senior children, and may make a grant to those managers or persons (d).

The local education authority must, before entering into an agreement, satisfy themselves that increased accommodation for senior children rendered necessary by the raising of the school age to fifteen will be provided, that arrangements for educating senior children are improved, and that accommodation will be provided for practical or advanced instruction. They must also, as regards a proposed new school, satisfy the Board of Education that the needs of the district cannot be met by the enlargement or improvement of an existing school and that the new school is required for senior children who, before attaining the age of eleven years, have attended, or will attend, a non-provided school in which religious instruction is given of the same kind as will be given at the new school (e).

An agreement may contain provisions as to the employment of teachers for religious instruction, or the giving of religious instruction in accordance with a syllabus in use in schools provided by the local education authority, and the agreement will cease and determine if the grant is repaid in full by the managers (f).

Until the grant is repaid all teachers in the school are in the employ-

(s) Education Act, 1921, s. 167 (1).

(t) For definition of local rates, see s. 167 (2); 7 Halsbury's Statutes 211.

(u) *Ibid.*, s. 18 (1). See also title EDUCATION COMMITTEE.

(a) Education Act, 1921, ss. 29 (2) (d), and 170 (6); 7 Halsbury's Statutes 144 and 213.

(b) *Ibid.*, s. 29 (2) (d).

(c) *Lancaster (County Palatine) Council v. Crowe* (No. 2), [1920] 1 K.B. 604; Digest (Supp.).

(d) Education Act, 1936, s. 8; 29 Halsbury's Statutes 123.

(e) *Ibid.*, s. 8 (3), (4).

(f) *Ibid.*, s. 9.

ment, and under the control, of the local education authority, who have exclusive powers of appointing and dismissing the teachers (*g*). [782]

*Maintenance.*—Any repairs which are required for the schoolhouse must be carried out at the expense of the managers. They must also repair any furniture provided by the local education authority if this is damaged owing to the use of the school out of school hours. Similarly, the local education authority must make good any damage occasioned by their use of the school out of school hours—*e.g.* for evening classes (*h*). Damage due to fair wear and tear is excepted from this requirement.

A local education authority are, however, under an obligation to make good any damage which they consider is due to the fair wear and tear in the use of any room in the schoolhouse which has been used for the purpose of a public elementary school. This, it will be observed, applies only to "the use of any room." As to the transfer of non-provided schools, see the title *ELEMENTARY EDUCATION*, Vol. V., p. 330. [783]

*Closure.*—If the managers of a non-provided school desire to close their school, they must give to the local education authority eighteen months' notice of their intention, and after this notice has been given it cannot be withdrawn without the consent of the local education authority (*i*).

If the managers of a non-provided school of which notice of intention to close has been given are unable or unwilling to carry on the school until the expiration of the eighteen months, the local education authority may do so (*k*).

Where there is a dispute as to whether a school shall be closed or not (*l*), the Board of Education must not, if the average attendance at the school is thirty or over, treat the school as unnecessary unless they are satisfied that accommodation for the pupils is available in some other public elementary school, which in the case of a non-provided school must be found in a school of the same denominational character within the area of the local education authority (*m*). [784]

*Conduct of a Non-Provided School.*—Although the managers of a non-provided school must provide the "schoolhouse" (*n*) and have control of the religious instruction given in the school (*o*), it is essential that the school shall be conducted in accordance with the requirements of the Act (*p*). One of the chief requirements is that which deals with the "Conscience Clause." This states that it must not be a condition of a child's admission to, or continuance at, a public elementary school that it shall attend or refrain from attending any Sunday school or any place of religious worship. Neither must it be a condition that a child shall attend any religious observance or instruction in religious

(*g*) Education Act, 1886, s. 10.

(*h*) Education Act, 1921, s. 29 (3). If the local education authority have no suitable accommodation in their own schools, they may use a non-provided school free of charge for not more than three evenings a week for educational purposes (*ibid.*, s. 29 (2) (*e*); 7 Halsbury's Statutes 144).

(*i*) Education Act, 1921, s. 40 (1); 7 Halsbury's Statutes 151.

(*h*) *Ibid.*, s. 40 (2).

(*j*) *Ibid.*, s. 17 (1), 19 (1).

(*m*) Education (Necessity of Schools) Act, 1933, s. 1.

(*n*) Education Act, 1921, ss. 29 (2) (*d*), 170 (6); 7 Halsbury's Statutes 144, 213.

(*o*) *Ibid.*, s. 29 (5) (*e*).

(*p*) *Ibid.*, s. 27 (1).

subjects in the school or elsewhere, from which he may be withdrawn by his parent. If a child is so withdrawn by his parent, he must not be required to attend school on any day exclusively set apart for religious observance by the body to which the parent belongs (*q*).

The Act also requires that a school shall be conducted in accordance with the conditions required to be fulfilled by a public elementary school in order to obtain a Parliamentary grant. These conditions are set out in the article on Elementary Education at p. 825 of Vol. V. under the heading "Conditions to be fulfilled to obtain a Parliamentary grant." [785]

**Appointment and Dismissal of Teachers.**—The managers of a non-provided school have the exclusive power of appointing and dismissing teachers (*r*), subject to the consent of the local education authority (*s*). In the case of appointments the consent of the local education authority can be withheld on educational grounds alone (*s*). The consent of the local education authority is not necessary to the dismissal of a teacher on grounds connected with the giving of religious instruction in the school (*s*). For special provisions as to the appointment and dismissal of teachers in certain schools, see also *ante*, p. 370. [786]

**Religious and Secular Instruction.**—The religious instruction given in non-provided schools must, as regards its character, be in accordance with the provisions of the trust deed (if any) relating thereto, and must be under the control of the managers (*t*).

If the trust deed provides for reference to the bishop or other denominational authority, on the question of what is appropriate religious teaching, having regard to the tenets of the denomination, that reference must not be interfered with (*t*). Arrangements for religious instruction must, except in special circumstances, be made by the managers, or in default by the local education authority, for children attending a non-provided school whose parents desire them to receive religious instruction in accordance with a syllabus in use in schools provided by the local education authority and cannot with reasonable convenience send them to a school provided by the authority (*a*).

Religious instruction must be given at the beginning and the end or at the beginning or the end of a school meeting. Any pupil may be withdrawn by his parent from religious instruction or observance without forfeiting any of the other benefits of the school (*b*).

A copy of the "Conscience Clause" (*c*) must be conspicuously displayed in the school (*c*). For special provisions as to religious instruction in certain schools, see also *ante*, p. 370. [787]

The managers of a non-provided school must carry out the directions of the local education authority as to the secular instruction given in the school, including any directions as to the number and educational qualifications of the teachers to be employed for such instruction.

(*q*) Education Act, 1921, s. 27 (1) (a). See also title ELEMENTARY EDUCATION, Vol. V., at p. 815.

(*r*) *Ibid.*, s. 29 (a); 7 Halsbury's Statutes 145.

(*s*) *Ibid.*, s. 29 (2) (c).

(*t*) *Ibid.*, s. 29 (5) (c).

(*a*) Education Act, 1886, s. 12; 29 Halsbury's Statutes 127.

(*b*) Education Act, 1921, s. 27 (1) (b); 7 Halsbury's Statutes 142. See also Education Act, 1886, s. 13; 29 Halsbury's Statutes 127.

(*c*) Education Act, 1921, s. 27 (1).

They must also arrange for the admission of certain specialist teachers of secular subjects appointed by the local education authority (d). [788]

**Grouping of Non-provided Schools.**—Where there are two or more non-provided schools of the same denomination in the same locality, these may be grouped for the purposes of organisation and management (e). [789]

**Endowments.**—It is clearly stated that nothing in the Education Act shall affect any endowment, except that where under the trusts affecting any endowment the income derived from it is to be applied in whole or in part for those purposes of a public elementary school for which provision is made by the local education authority, then the whole of the income, or part as the case may be, must be paid to that local education authority (f).

Where any money arising from an endowment is paid to a county council for those purposes of a public elementary school for which provision is made by the county council, this money must be credited in aid of the elementary education rate for the parish or parishes served by the school (g). There is no similar provision relating to county boroughs, boroughs or urban districts. [790]

**Inspection in Religious Subjects.**—If the managers of a non-provided school desire to have their school inspected, or the pupils examined, in religious subjects by an inspector other than one of His Majesty's inspectors, they may arrange for this to be done, provided it does not occupy more than two days in any one year (h).

Public notice of the managers' intention to do this must be given at least fourteen days before (i).

On any such day religious observance may be practised and instruction in religious subjects given in the school, subject to the parent's right of withdrawing a child (j). [791]

**Financial Arrangements.**—The difficulties inherent in the present system of "dual control" are perhaps most evident when questions of finance arise, for, although the Act appears to be explicit when it states in sect. 29 (2) (d) that the managers must provide the schoolhouse free of charge, subject to the local education authority making good the damage due to fair wear and tear, the matter is not so simple as it would appear, and in administering these requirements there is considerable diversity of practice. The expression "schoolhouse" in relation to a public elementary school includes the teacher's dwelling-house (which need not, however, be provided free of charge (k)), the playground, the offices and all premises belonging to or required for a school (l). Sect. 29 (2) provides that the local education authority must maintain a non-provided school and keep it efficient so long as it is necessary and so long as the requirements of the Act are complied with. Thus the first financial burden of the managers is to defray the cost of the schoolhouse, and secondly to keep it in good repair and to make such alterations and improvements in the buildings as may be required by the local education authority. [792]

(d) Education Act, 1921, s. 29 (2) (a).

(e) *Ibid.*, s. 41 (1).

(f) *Ibid.*, s. 133 (1); 7 Halsbury's Statutes 200.

(g) *Ibid.*, s. 163 (3). See also s. 27 (1).

(h) *Ibid.*, s. 170 (6); 7 Halsbury's Statutes 213.

(i) *Ibid.*, s. 34.

(j) *Ibid.*, s. 41 (3).

(k) *Ibid.*, s. 133 (2).

(l) S. 29 (2) (d).

*Cost of Maintenance.*—The cost of maintaining a non-provided school falls on the local education authority. This includes the cost of the salaries of teachers, caretakers and cleaners (although they are appointed by the managers) (m), the furniture (including the blinds) required for school purposes, all educational books, stationery and apparatus, cleansing and whitewashing the sanitary offices, cleansing and flushing drains, providing bushes (not trees, the ownership of which is vested in the landlord) for a school garden, supplying light and heat, emptying cesspools. The local education authority are liable for these expenses only in so far as they occur in connection with the premises when used for school purposes. When the buildings are used for evening meetings, Sunday school, concerts, etc., the cost of heating, lighting and cleaning the building is a matter for the managers. As the accounts for heating, lighting and caretaking are usually paid in full by the local education authority, it therefore becomes necessary to apportion them between the managers and the local education authority. [793]

*Fair Wear and Tear.*—The internal decorations of a non-provided school, so far as they relate to the use of any room in the schoolhouse, are also a matter for the local education authority's financial assistance, for they are required by sect. 29 (2) (d) of the Act to make good any damage in the use of any room in the schoolhouse which they consider has been due to fair wear and tear during such use.

The expression "room" has not been legally defined, but when the matter was referred to the Board of Education they replied that they were advised that the liability of a local education authority under this provision extended to any room whether a schoolroom, classroom, cloakroom or lavatory inside the building, but did not extend to rooms outside the building, such, for instance, as a lavatory built in a playground.

In making good damage of this nature a local education authority usually has regard to the user of the premises for purposes other than as a public elementary school, and consequently it becomes necessary to apportion the cost incurred between the local education authority and the managers. There appears to be no uniformity among local education authorities in arriving at an equitable proportion to be paid by the two bodies, but one of the fairest methods seems to be that based on the ratio which the number of room-hours of use for other than school purposes bears to the total number of school hours of user. For example, if a school consisting of six rooms is used for 1,200 hours for school purposes in a year, the total user for school purposes would be 7,200 hours. If, in addition, the school is used for meetings, concerts, Sunday school, etc. for 600 room-hours, then the total user would be 7,800 room-hours (i.e.  $7,200 + 600$ ), the managers' proportion being  $\frac{1}{13}$  ( $600/7,800$ ). If this basis were adopted, the managers would pay  $\frac{1}{13}$  of the cost of redecorating the interior of the school, and of all the sundry damage due to fair wear and tear, such as replacing windows, providing new floors or ceilings, repairing heating, lighting and interior water apparatus, etc. [794]

*School Playground.*—The managers must defray the cost of repairing the schoolhouse (which by sect. 170 (6) includes the playground). They must also defray the cost of altering and improving the buildings (n). Thus the local education authority may defray the cost of

(m) Education Act, 1921, s. 20 (6); *Wilford v. West Riding of Yorkshire County Council*, [1908] 1 K. B. 686; 19 Digest 558, 29.

(n) *Ibid.*, s. 20 (2) (d); 7 Halsbury's Statutes 144.

improving the playground, the expression "improving" meaning a change in the nature of the surface, *e.g.* paving or flagging a playground not previously paved or flagged (*o*). Although the Board of Education in a letter to a local education authority have expressed the view that a local education authority may probably pay the whole of the cost of improving the playground of a non-provided school, a number of local education authorities only make a contribution to the cost on condition that the managers will provide the balance. [795]

*Exemption from Rates.*—Sect. 167 (1) of the Education Act, 1921, provides that no person shall be assessed or rated to or for any local rate (*p*) in respect of any land or buildings used exclusively for the purpose of the schoolrooms, offices or playground of a non-provided public elementary school. This exemption does not, however, apply to any profit which the managers may derive from letting the school, or any part thereof, such as a house which is occupied by the head teacher and for which he pays rent to the managers. [796]

**London.**—As to provisions of the Education Act, 1921 (*q*), relating to endowments of non-provided schools, see title **ELEMENTARY EDUCATION**.

As to provisions of the Education (London) Act, 1903, relating to limitation or qualification of governors or managers of institutions aided by grant from the L.C.C., see title **HIGHER EDUCATION**. [797]

(*o*) *Lancashire County Council v. Crowe* (No. 2), [1929] 1 K. B. 604, D. C.; Digest (Supp.).

(*p*) For definition of "local rate," see s. 167 (2); 7 Halsbury's Statutes 211.

(*q*) See s. 41 (3); 7 Halsbury's Statutes 152.

## NON-REPAIR OF HIGHWAY

See **REPAIR OF ROADS**.

## NON-VOCATIONAL EDUCATION

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See also title : **EDUCATION**.

**Meaning.**—Criticism might be levelled at the above title on the ground that all true education should be non-vocational, and the popular confusion between "education" and "instruction" would tend to support this criticism. But those engaged in teaching will



understand that, although some branches of learning might be placed in the borderland between vocational and non-vocational education, there are other branches which clearly fall into one or other of these categories.

The progress of popular education in England and Wales has been characterised by a growing recognition of the claims of subjects of a purely cultural nature. With the steady decrease in the length of the working day, the need of providing the citizen—whether youthful or mature—with some form of intellectual activity has become more apparent, with the result that the curricula of schools have, in a number of cases, been modified to meet these changing conditions. [798]

**Public Elementary and Secondary Schools.**—In the elementary school such subjects as music, the drama, literature, art, biology, crafts and physical training, are now receiving a more prominent place, for, besides the artistic satisfaction they give to students, they may, and indeed should, assist in solving the problem of juvenile delinquency.

The syllabus of the secondary school is, unfortunately, much circumscribed by the requirements for a school leaving certificate, and, although some subjects are included which might be termed non-vocational, their pursuit is mainly for examination purposes, and is consequently lacking in that element of "the subject for itself" which is the ideal stimulus for the study of any non-vocational branch of learning. [799]

**Technical and Art Schools.**—In technical schools there are few branches of the curriculum that can be considered as non-vocational in character. But in art schools, although a number of students enter for vocational purposes, a considerable proportion study from purely cultural motives. [800]

**Work of Voluntary Bodies.**—It is, however, when the education of the adult is considered that the broad field of non-vocational education is revealed.

Adult education has grown as a great and complicated movement with a history going back for over a century and a half. In no branch of education, perhaps, has voluntary effort played such an important part. Such bodies as the Educational Settlements Association, the Adult School Union, the British Institute of Adult Education, the Workers' Educational Association, the Y.M.C.A. and the Y.W.C.A. are only a few of the organisations that have been, and still are, providing for the non-vocational needs of large numbers of students. Among the important institutions that are playing a prominent part in the non-vocational education of adults should be included Ruskin College, Oxford; the Working Men's College and the Hillcroft Residential College for Working Women, London; and Coleg Harlech, Wales (a). [801]

**Policy of the Board of Education.**—The Board of Education, in Circular No. 1444 issued on January 6, 1936, dealt in detail with their programme of educational reform. In this circular they made special reference in para. 15 to adult education, stating that the Board desired, with the co-operation of the local education authorities, to give every

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(a) See also Vol. II., pp. 147, 148.

assistance to its systematic development. In view of the contemplated new advance, authorities were requested to take the opportunity to set up, in co-operation with the universities and the various voluntary bodies, machinery for surveying from time to time the needs of adults and the type of provision best designed to meet them.

The Board of Education in their Adult Education Regulations (*b*) make provision for the payment of grants from public funds to responsible bodies (not being local education authorities) in aid of the liberal education of adults. In these regulations they state the courses which are eligible for recognition, and lay down requirements in connection with the responsible bodies, teachers, administrators, etc. [802]

**Local Education Authorities.**—The activities of local education authorities in providing non-vocational education must comply with Regulations for Further Education, 1934 (*c*), of the Board of Education. General conditions to be complied with are prescribed by the regulations, the teaching staff must be suitable and sufficient, and the refusal of admission to a school and the fees to be charged are also dealt with. In pursuance of their powers, local education authorities have provided a wide variety of classes suitable for adults. For instance, at one institute alone under a large authority, classes are provided, *inter alia*, in "modern drama," "stage technique and play study," "public speaking," "English art and culture," "heraldry," "Jewish folk song and music," "philosophy of religion," "sociology," "Greek dancing," and "contemporary Europe." [803]

**University Extension Lectures, Cinema, Broadcasting, etc.**—University extension lectures have also played a prominent part in providing, in co-operation with local education authorities and other bodies, lectures on a variety of topics of a cultural nature. The place of the cinema as a factor in non-vocational education must not be forgotten, although the proportion of films included in ordinary programmes which present, at the same time, both educational and entertainment values is regrettably low. Broadcast talks have now become a popular feature, and these, especially where associated with study circles, should certainly be included in the non-vocational activities of to-day.

There can be no doubt that the effect of publishing editions of standard works such as the Home University Library and Everyman's Library at popular prices, as well as the provision of well-equipped public libraries, have assisted in the growth of non-vocational education among adults. [804]

**London.**—The law in London is the same as that generally applicable to the rest of the country.

By sect. 42 of the L.C.C. (General Powers) Act, 1926 (*d*), the L.C.C., City corporation and metropolitan borough councils may arrange, *inter alia*, for lectures and the display of pictures (including cinema displays) on questions relating to health or disease. The L.C.C. may contribute to any expenses so incurred by metropolitan borough councils, and the Minister of Health may make rules prescribing the restrictions or conditions, subject to which these powers may be exercised.

Cinema displays on questions relating to health or disease may be given in parks and open spaces (*e*). See title OPEN SPACES. [805]

(b) S.R. & O., 1932, No. 75; 1934, No. 671; 1935, No. 661.

(c) S.R. & O., 1934, No. 303.

(d) 11 Halsbury's Statutes 1384.

(e) L.C.C. (General Powers) Act, 1935, Part V.; 28 Halsbury's Statutes 151.

## NOTICE TO TREAT

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See also titles : ACQUISITION OF LAND (OTHER THAN COMPULSORY);  
COMPENSATION ON ACQUISITION OF LAND;  
COMPULSORY PURCHASE OF LAND.

**Introduction.**—Where a local authority are authorised to purchase or take land compulsorily the provisions of the Lands Clauses Acts (a) are almost invariably incorporated in the special Act, provisional order or compulsory purchase order from which the power to purchase or take is derived. The authority are accordingly, by force of sect. 18 of the Lands Clauses Consolidation Act, 1845 (b), obliged to serve a notice on every person interested in the land stating that they are willing to treat for the purchase thereof. Such a notice is called a notice to treat.

The acquisition of land by an authority may have the effect of interfering with or destroying incorporeal rights which are enjoyed in respect of the land. Thus where land is taken for the purpose of building a school, an easement of light or a right of way appurtenant to neighbouring land may be destroyed. In such a case it is not necessary for the authority to serve a notice to treat upon the person entitled to the right; for the easement or right is not being acquired by the authority for their statutory purposes, but is merely being interfered with by the acquisition of the land over which it is enjoyed, and by the uses of that land for the statutory purposes (c). [806]

Again, no notice to treat need be served in those cases where the authority are authorised by statute to execute works upon the lands of private owners unless by the statute the authority are obliged to acquire the land upon which they propose to execute the authorised works. This is so even when by force of the provisions of the statute the authority do in fact acquire a corporeal interest in the land upon which the works have been carried out. Thus the power given by the

(a) That is the Lands Clauses Consolidation Act, 1845; 2 Halsbury's Statutes 1113; the Lands Clauses Consolidation Acts Amendment Act, 1860; *ibid.*, 1106; the Lands Clauses Consolidation Act, 1869; *ibid.*, 1105; the Lands Clauses (Umpire) Act, 1883; *ibid.*; and the Lands Clauses (Taxation of Costs) Act, 1895; *ibid.*, 1169.

(b) 2 Halsbury's Statutes 1120.

(c) *Macey v. Metropolitan Board of Works* (1864), 33 L. J. Ch. 377; 11 Digest 145, 273; *Bedford (Duke of) v. Dawson* (1875), L. R. 20 Eq. 253; *Clark v. London School Board* (1874), 9 Ch. App. 120; 11 Digest 187, 233; *Swainston v. Finn and Metropolitan Board of Works* (1888), 52 L. J. Ch. 235; *Bush v. Trowbridge Waterworks Co.* (1875), 10 Ch. App. 459; 43 Digest 1073, 109; *London School Board v. Smith*, [1895] W. N. 87.

P.H.A., 1875, sect. 16 (*d*), to carry a sewer under land may be exercised without serving any notice to treat upon the owner of the lands; although when the sewer has been laid the authority acquire a corporeal interest in the land by virtue of the fact that the sewer vests in them. The position is the same with regard to the power to carry water mains under sect. 54 of the same Act (*e*). [807]

**Contents of the Notice.**—The notice to treat should demand from the party upon whom it is served particulars of the nature of his estate or interest in the land therein comprised, and of the claim which he makes in respect thereof. Each notice must state clearly and accurately the position and quantity of the land which the authority desire to acquire. It must also state that the authority are willing to treat for the purchase of the land and as to the compensation to be made to all parties for the damage that may be sustained by reason of the execution of the works authorised by the Act under which the acquisition is being made (*f*).

If the acquisition is being effected under a special Act or order which incorporates the Lands Clauses Acts alone, the notice should state whether it is sought to take the minerals within and under the land. In the case of an acquisition by a local authority, this is, however, usually unnecessary, since the provisional order or compulsory purchase order by means of which the land is acquired almost invariably incorporates the provisions of sects. 77 to 85 of the Railways Clauses Consolidation Act, 1845 (*g*). Sect. 77 provides that the authority shall not be entitled to any mines of coal, ironstone, slate or other minerals unless the same be expressly purchased, and all such mines shall be deemed to be excepted out of the conveyance of such lands unless expressly named therein. It is thought that the effect of this section is that unless the notice to treat expressly refers to minerals, it must be read as if minerals were not comprised therein. [808]

**Method of Service.**—The service of notices to treat must be effected in strict accordance with the relevant statutory provisions (*h*). They must either be served personally on the parties, or left at their usual place of abode if any such after diligent inquiry can be found (*i*). If any party is absent from the United Kingdom, or cannot be found after diligent inquiry, the notice must also be left with the occupier of the lands, or, if there is no occupier, it must be affixed upon some conspicuous part of the lands. The word "also," which appears in the Act, seems to indicate that service by leaving with the occupier will not be sufficient if by diligent inquiry the usual place of abode of the owner can be found. If the notice comprises land in the occupation of more than one person, leaving the notice with one of the occupiers will not in any event be a good service on the owner. The notice,

(*d*) 13 Halsbury's Statutes 633. The position will apparently be the same under s. 15 of P.H.A., 1936 (29 Halsbury's Statutes 334), which will come into operation on October 1, 1937.

(*e*) *Ibid.*, 649. This section will be replaced by s. 119 of the P.H.A., 1936.

(*f*) Lands Clauses Consolidation Act, 1845, s. 18; 2 Halsbury's Statutes 1120.

(*g*) 14 Halsbury's Statutes 61-64. See L.G.A., 1933, ss. 160 (6), 161 (2), and Sched. VI.; 26 Halsbury's Statutes 394, 508.

(*h*) That is in accordance with the provisions of the Lands Clauses Consolidation Act, 1845, s. 19; 2 Halsbury's Statutes 1120.

(*i*) It may be observed that the Act does not make personal service essential. It allows the alternative method of leaving at the usual place of abode.

or a copy thereof, must be left with each occupier (*k*). Service on the occupiers will not be sufficient unless it be shown that at the time of service the owner either was absent from the United Kingdom or could not be found. [809]

When the party to be served is a corporation aggregate, the notice to treat must be left at the principal office of business of the corporation; or if no such office can after diligent inquiry be found, the notice must be served (*l*) upon some principal member, if any, of such corporation.

Presumably a member of the governing body of the corporation would be considered to be a principal member for this purpose. On the other hand, service on one of the principal officials of the corporation would not, it seems, be sufficient unless the official was also one of the corporators. The notice must also be left with the occupier of the lands; or, if there is no such occupier, it must be affixed upon some conspicuous part of the lands (*m*). [810]

**Persons to be Served.**—Notice to treat must be served upon all persons necessary to convey all interests in land. Persons having an equitable interest only, as for example an equitable mortgage, must be served equally with those enjoying legal estates or interests (*n*). Where the legal estate in land is vested in persons, such as personal representatives, a tenant for life, or trustees for sale, who have by statute or the provisions of some instrument a power to sell and convey the land and in so doing to over-reach equitable interests affecting the same, it is unnecessary to serve beneficiaries in enjoyment of the interests which are capable of being over-reached. Persons in the position of licensees need not be served. Thus a company who had been granted an exclusive right for a number of years to sell refreshments in a theatre, and for that purpose to use the bars in the building, were held not to have any interest in the land (*o*). The mere fact that the document under which the licence arises is called a "lease" is immaterial. [811]

When the authority acquire land which is subject to a short tenancy, for example a monthly, quarterly, or yearly tenancy, they may, if they think fit, serve a notice to treat on the tenant and acquire his interest by purchase. There is, however, no obligation upon them to serve such a notice. They may acquire the reversion and then determine the tenancy by notice to quit in the ordinary way, or they may arrange with the reversioner that he shall first determine the tenancy and then sell with vacant possession (*p*).

When the authority acquire the interest of a lessor subject to an existing tenancy under the terms of which the tenant is empowered to do a specified thing with the consent or approval of the landlord, the authority cannot withhold this consent merely for the purpose of

(*k*) *Shepherd v. Norwich Corpn.* (1885), 30 Ch. D. 553; 11 Digest 173, 505.

(*l*) This, it is thought, means personally served.

(*m*) The Lands Clauses Consolidation Act, 1845, s. 10; 2 Halsbury's Statutes 1120.

(*n*) *Rogers v. Kingston-upon-Hull Dock Co.* (1864), 11 L. T. 463; 82 Digest 259, 430; *Re King's Estates, Ex parte East of London Rail. Co.* (1873), L. R. 16 Eq. 521; 80 Digest 344, 28; *Sweetman v. Metropolitan Rail. Co.* (1864), 1 Hem. & M. 453.

(*o*) *Warr & Co. v. L.C.C.*, [1904] 1 K. B. 713; 11 Digest 124, 155.

(*p*) *Syers v. Metropolitan Board of Works* (1877), 36 L. T. 277, C. A.; 11 Digest 178, 502.

defeating a claim to compensation which would arise if consent were given (g). [812]

**Effect of Service.**—The notice to treat as between the landowner and the authority gives rise to the relationship of vendor and purchaser to a certain extent and for certain purposes, and some of the consequences that flow from an actual contract also follow upon the notice to treat. Thus the particular lands which the authority are to take, and which the landowner must give up to the authority after steps have been taken to assess the proper compensation, are fixed by the notice (r).

The rights and obligations created arise by force of the statute and they are accordingly legal and not equitable. It follows that if the owner, after service of the notice, conveys his estate to a third party, the third party will be bound by the notice to the same extent as the owner on whom it was served. And this is so even when the third party took, without any knowledge of the fact that service of the notice to treat had been effected (s). Doubt has been expressed on the question whether a notice to treat is an estate contract within the meaning of the Land Charges Act, 1925 (t), and requires to be registered under that Act. It is understood that local authorities have been advised by the M. of H. to register it *ex cautela*.

A landowner who has received a notice to treat cannot deal with the land comprised in the notice, or with any land held therewith, in such a way as to increase the burden of the authority with regard to the compensation to be paid with regard to the land (u). Interests created after service of the notice to treat out of an interest in the land in respect of which a notice has been served are not a subject for compensation. Thus, if an estate owner in fee simple grant a lease after service of a notice to treat, no compensation is payable in respect of the lessee's interest (v). [813]

Although an owner who has been served with a notice may not create new rights so as to give rise to additional claims to compensation, he is entitled to sell or convey or otherwise deal with his own interest in the land; and the fact that the person to whom the owner sells puts forward and sustains a claim to compensation greater than that which the owner would have been willing to accept is immaterial. So where the owner of a leasehold interest assessed the value of his interest in his particulars of claim as nil, and before his claim was agreed by the authority assigned the interest to an assignee who sublet at a larger rent and thereupon put in a substantial claim, it was held that the original owner was entitled to withdraw and amend his claim at any time before the same was accepted by the authority, that the assignee could not be in a worse position, and that by putting in a substantial claim the assignee must be deemed to have withdrawn the nominal

(g) *Re Masters and G.W. Rail. Co.*, [1901] 2 K. B. 84; 11 Digest 146, 500.

(r) See *Haynes v. Haynes* (1861), 1 Drew & Sm. 426 at p. 450; 11 Digest 175, 520; cited with approval in *Cardiff Corpn. v. Cook*, [1923] 2 Ch. 115; Digest (Supp.).

(s) *Mercer v. Liverpool etc. Rail. Co.*, [1903] 1 K. B. 652 at p. 602.

(t) 15 Halsbury's Statutes 524.

(u) *Mercer v. Liverpool etc. Rail. Co.*, [1904] A. C. 461 at p. 465; 11 Digest 276, 2033.

(v) *Wilkins v. Birmingham Corpn.* (1883), 25 Ch. D. 78; *Zick v. London United Tramways, Ltd.*, [1908] 2 K. B. 126; 11 Digest 276, 2039.

claim put in by the original owner (b). It seems that when a claim has been put forward by the original owner for a certain sum in respect of compensation the claim operates as a continuing offer to the authority and binds all parties into whose hands the land comes, unless and until the claim is withdrawn either expressly or impliedly by the making of a new and inconsistent claim (c).

The service of a notice to treat is necessary only in a case where the authority have decided to acquire the land in question by compulsory purchase. In practice, however, notices are often served before the authority have really made up their minds whether they will use their powers of compulsory acquisition; and this course has been particularly favoured since the power of withdrawing notices has been available (d). Great hardship is often caused to landowners by the service of notices in such circumstances, for although theoretically an owner is free to deal with his own interest in the land he may in practice find it impossible to do so. In any event the service of a notice effectually prevents him from carving new interests out of his own. It is submitted that the authority ought to postpone the service of notices until they have affirmatively decided that compulsory acquisition is necessary, and that the notice ought not to be used merely as a means of persuading the owner to sell at a price which the authority conceive to be the proper one. [814]

**Withdrawal of Notice and Waiver.**—The general rule under the Lands Clauses Acts is that a notice to treat cannot be withdrawn. Neither party can without the consent of the other be relieved of the obligations to which the notice gives rise. Generally speaking, however, this rule does not apply to an acquisition by a local authority. Under the Lands Clauses Acts the owner served may be entitled by serving a counter notice to call upon the authority to take more land than that which is comprised in the notice. Thus, if the notice relates to a part only of a house or other building or manufactory, the owner may in certain circumstances (e) compel the authority to purchase the whole (f). In such a case (by way of exception to the general rule) the authority are by virtue of the Lands Clauses Acts entitled, on service of the counter-notice, to withdraw the original notice. [815]

Again, the special Act under which the acquisition is made may, and in the case of a local authority often does, give a limited right of withdrawal. Thus under the Metropolitan Paving Act, 1817 (g), the authority may withdraw a notice which has been repudiated by the owner (h).

Finally, where the provisions of the Acquisition of Land (Assessment of Compensation) Act, 1919 (i), are applicable (k), the notice to treat may be withdrawn at any time within six weeks of the delivery

(b) *Cardiff Corpn. v. Cook*, [1923] 2 Ch. 115; Digest (Supp.).

(c) See *ibid.*, at p. 123.

(d) See *infra* on withdrawal of notice.

(e) See title COMPULSORY ACQUISITION OF LAND.

(f) See the Lands Clauses Consolidation Act, 1845, s. 92; 2 Halsbury's Statutes 1145. The operation of this section is frequently excluded by the provisions of the Act under which a compulsory purchase order is made. Sometimes different but similar provisions are substituted.

(g) 11 Halsbury's Statutes 838.

(h) *Wild v. Woolwich Borough Council*, [1910] 1 Ch. 35; 11 Digest 170, 550. For another example, see the Small Holdings and Allotments Act, 1908; 1 Halsbury's Statutes 257.

(i) 2 Halsbury's Statutes 1176.

(k) The provisions are invariably expressly incorporated in the provisional order

of a notice of claim in respect of the land comprised in the notice to treat (*l*), but the authority are liable for loss or expenses occasioned thereby. It seems that the withdrawal may be effected only in respect of the land to which the notice of claim relates and not in respect of the other land (if any) comprised in the notice to treat.

Either the authority or the owner may, by waiver, laches or delay, lose the right to enforce the quasi-contract constituted by the service of the notice to treat. Thus when the acquisition is authorised for the purposes of the erection of works which must be completed within a certain period, the acquiring authority would, it is thought, lose their right to enforce the notice if they delay completion of the purchase until after the expiration of the period (*m*). [816]

**Subsequent Notice.**—An authority may serve the same person with more than one notice to treat in respect of different lands. So if the land comprised in a notice is found to be insufficient for the purposes of the authority, a further notice may be served in respect of additional land (*n*). The compulsory powers are not exhausted merely by service of a single notice to treat. If this notice is validly withdrawn (*o*), the authority are in the same position as if no notice to treat had been given, and may therefore give a second notice, in respect of the land comprised in the first notice, or any part thereof, and, after that has been validly withdrawn, may give a third notice and so on. This is so at any rate when the acquisition takes place in pursuance of powers conferred by a special Act in the usual form which authorises the acquisition of described lands (*p*); for in such a case the power must be construed as a power to acquire the whole or any part of the described lands. Whether the position would always be the same when the acquisition is under a compulsory purchase order made and confirmed under some general Act is doubtful. Thus when a housing authority declare an area to be a clearance area, and having decided to deal with the area by purchase make a compulsory purchase order (which is confirmed) with regard to the area, it is thought that they will come under an obligation to complete the purchase of the whole. In such a case the authority could not serve notices to treat with regard to the whole, and then withdraw them and serve fresh notices as to a part.

If land is mortgaged and the mortgagor only has been served with notice, a further notice may subsequently be served upon the mortgagee, even after the authority have gone into possession of the land (*q*). [817]

or compulsory purchase order under which the acquisition is effected. If they were not so incorporated, they would, it is thought, be incorporated by force of the provisions of the 1919 Act itself.

(*l*) The Acquisition of Land (Assessment of Compensation) Act, 1919, s. 5 (2) ; 2 Halsbury's Statutes 1179.

(*m*) See *Tiverton & N. Devon Rail. Co. v. Loosemore* (1884), 9 App. Cas. 480 at p. 496 ; 11 Digest 219, 1935 ; see also *Hedges v. Metropolitan Rail. Co.* (1860), 28 Beav. 109 ; *Strutton v. Great Western & Brentford Rail. Co.* (1870), 5 Ch. App. 751 ; 11 Digest 216, 1002.

(*n*) *Stamps v. Birmingham etc. Rail. Co.* (1848), 2 Ph. 673 ; 11 Digest 173, 508. Powers to acquire compulsorily the additional land must, of course, be in operation under some Act or order.

(*o*) See as to withdrawal of notice, *ante*.

(*p*) *Ashton Vale Iron Co. v. Bristol Corpn.*, [1901] 1 Ch. 591 ; 11 Digest 173, 509.

(*q*) *Cooke v. L.C.C.*, [1911] 1 Ch. 604 ; 75 J. P. 306.



## NOTIFICATION OF BIRTHS

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**Introductory.**—The maternity and child welfare authority is deprived of many opportunities of assisting the lying-in mother and the infant if it has no knowledge that the birth has occurred. The registration of births under the Births and Deaths Registration Act, 1874 (a), was at one time regarded by medical officers of health as opening up valuable possibilities of hygienic work in the interest of mother and infant; but the facts, that registration of a birth need not be effected for six weeks and that registration is only known at second hand, made it difficult in the past to ensure the speedy visitation of homes where births had occurred. The object of the notification of births is to bring the local authority into touch with the new-born infant and its mother as soon as possible, and it is in no sense a substitute for registration. Nor can it ever be so complete and trustworthy a civil record as registration is. [818]

**General Outline.**—In the case of every child born, whether alive or dead, it is the duty of the father of the child, if he is actually residing in the house where the birth takes place at the time of its occurrence, to give notice in writing to the M.O.H. of the council who are the welfare authority for the area in which the birth takes place (b). This is, in a borough whether or not a county borough, the council of the borough, and in a county district the county council or district council, whichever was before October 1, 1937, the local authority for the purposes of the Notification of Births Acts, 1907 and 1915, now both repealed as from that date. A concurrent duty devolves upon any person in attendance upon the mother at the time of or within six hours after birth (see title MIDWIVES). The reference to attendance at any time within six hours of the birth is important, since it may happen that a mother is delivered by certain persons and is transferred elsewhere to the care of other persons in attendance on her. Such persons are particularly apt to overlook their responsibilities as regards notification. Notification only applies to a child which has issued forth from its mother after the expiration of the twenty-eighth week of pregnancy; but it applies whether the child is alive or dead at the time of birth. There is no duty on the mother to notify a birth formally, and it may thus happen (though rarely) that a birth is not notifiable,

(a) 15 Halsbury's Statutes 787.

(b) P.H.A., 1936, s. 203; 29 Halsbury's Statutes 462.

that is to say where the mother delivers herself, away from the father or other attendant, and conceals the birth for six hours. [819]

Notification is effected by posting a prepaid letter or postcard containing notice of the birth, addressed to the M.O.H. at his office or residence, or by delivering a written notice at his office or residence. The delivery or posting of the notification must be effected within thirty-six hours after the birth. The welfare authority must, on application by any medical practitioner or midwife residing or practising in their area, supply without charge addressed and stamped postcards containing the form of notice. Such postcards are usually provided with embossed stamps and bound in a book for convenience. On the front of the cover the salient points of the Act are summarised. Each postcard can be separated at a perforation and has a counterfoil upon which the essential points can be noted for future reference. Apart from the bare statutory requirements it is usual to provide spaces to record whether the child is alive or stillborn, the sex, the name of the parent and his occupation. The person notifying is also asked to indicate his status, whether father, doctor, midwife, etc. No fee is payable by the local authority to the person notifying.

The notification is in addition to and not in substitution for the requirement of any Act relating to the registration of births, and a registrar of births and deaths may at all reasonable times have access to notices of births received by the M.O.H., or to any book in which such notices may be recorded, for the purpose of obtaining information concerning births which may have occurred in his sub-district. [820]

**The Local Authorities Concerned.**—The Notification of Births Act, 1907 (c), was adoptive, but the circumstances under which the Act was adopted and the machinery involved are now of little interest. The Notification of Births (Extension) Act, 1915 (d), enacted that the Act of 1907 should on and after September 1, 1915, take effect in every area in which it was not already in force, and both Acts (c) will, as mentioned above, be repealed and superseded as from October 1, 1937, by the corresponding provisions in the P.H.A., 1936. By sect. 200 of the Act of 1936 (f), there is now in every district one authority responsible for notification of births, maternity and child welfare, and child life protection.

This authority is referred to as a "welfare authority," and the county borough, county, or part of a county for which they act is referred to as their "area."

In any county district where the welfare authority is not the local education authority for elementary education, the Minister of Health may, on a representation made to him by the council, who are the local education authority for elementary education, by order transfer these functions to the education authority if he is satisfied that the transfer would conduce to the more efficient administration of the functions relating to public health and education, or may revoke an order previously made. The new provisions should help in removing rivalry, which has been known to exist, as to which local authority should act as the maternity and child welfare authority. [821]

(c) 15 Halsbury's Statutes 765.

(d) *Ibid.*, 707.

(e) Together with some related provisions in the L.G.A., 1929; 10 Halsbury's Statutes 883.

(f) 29 Halsbury's Statutes 460.

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**Enforcement of Notification.**—Any person who is required to notify a birth and fails to do so is liable on summary conviction to a fine not exceeding 20s. No person is, however, liable to such a penalty if he satisfies the court that he believed, and had reasonable grounds to believe, that notice had been duly given by some other person. The local authority obtain their information as to births which have occurred in various ways, but mainly from the registrar of births and deaths. At weekly intervals he may furnish the M.O.H. with returns of births registered. The fee which the local authority pays for such returns is twopence for a return and a further fee of twopence for each birth entered in such return. (Registrar-General's Handbook for Registration Offices.)

With this evidence in their possession the local authority are in a position to deal with omissions to notify. It is first necessary to make tactful inquiries from the mother or married couple concerned, as to the liability of the father and the various persons in attendance on the mother at the time of birth. It may be plainly said that fathers are universally ignorant of their duties as regards notification and rarely notify unless prompted by the doctor or midwife to do so. If prosecuted they are usually able to satisfy the court of the existence of the "reasonable grounds" mentioned above. It may be possible to get a doctor or midwife convicted, but legal proceedings have been generally abandoned in favour of other methods. Maternity and child welfare work has flourished in an atmosphere of friendly co-operation between the various parties concerned, and nothing is more likely to disturb such co-operation than a resort to legal proceedings. In the case of a default on the part of a doctor or midwife, a reasoned letter is usually sufficient to obtain an improvement in future procedure. A similar letter directed to the father may have an indirect effect. He will probably consult the doctor or midwife on the matter and his grievance is not likely to be against the local authority.

The duty of notification is fairly generally observed. In Paddington during the year 1936 no less than 98 per cent. of the births were duly notified. [822]

**Notification of Stillbirths.**—The birth of a child which has issued forth from its mother after the expiration of the twenty-eighth week of pregnancy and which is dead is notifiable. For purposes of registration under the Births and Deaths Registration Act, 1926 (g), such a child is said to be stillborn if it did not at any time, after being completely expelled from its mother, breathe or show any other signs of life. The local authority can therefore obtain further information as to non-notified births from the returns of stillbirths furnished by the registrar of births and deaths on request. When a stillbirth has been notified the mother is visited by a health visitor in due course and such inquiries are made as will tend to throw light on the abnormal occurrence. The child may have died before birth owing to the existence of some constitutional disease or at the time of birth from injury or suffocation. Such an accident may be preventable on a future occasion, and the mother may be advised to seek the advice of her doctor or to attend a post-natal clinic (see title CLINICS). She will in any case be advised to seek medical advice early in her next pregnancy. [823]

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(g) 15 Halsbury's Statutes 768.

**Use Made of Notification.**—A certain number of notifications will refer to mothers who have been confined in the area but are resident in other areas. The managers of institutions and nursing homes accommodating such mothers are requested to mention the fact on the form, and the information is usually passed on to the authority within whose area the mother normally resides. In a county district the M.O.H. is required to send duplicates of any notices received by him to the county M.O.H. unless the council of his district are also the local supervising authority under the Midwives Acts, 1902 to 1936 (*h*). This information is useful to the county M.O.H. in keeping in touch with the activities of midwives, and in ascertaining the existence of maternity homes.

The health visitor of the local authority will receive particulars of the notification and will decide on her course of action. Some births she will not visit, from there being obviously no need for such a visit, for example by reason of the financial position of the family concerned. Bearing in mind that the health visitor has no right of entry to any house she must consider what is the appropriate occasion for her visit. Ideally this is just after the doctor or midwife has left, that is to say a little later than the fourteenth day in either case (*i*). Only when some very serious disease such as ophthalmia of the new-born is present will she exercise her privilege of early visitation. However, the fact that notifications must be effected within thirty-six hours of the birth envisages other possibilities that may call for early intervention. [824]

**London.**—Similar provisions relating to London are contained in sect. 255 of the P.H. (London) Act, 1936 (*k*).

The welfare authorities for this purpose are, as respects the City, the common council and, as respects a borough, the council of the borough. [825]

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(*h*) P.H.A., 1936, s. 203; 20 Halsbury's Statutes 462.

17 (*a*), in force after January 1, 1937).

(*k*) 20 Geo. 5 & 1 Edw. 8, c. 50.

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## NOTIFICATION OF INFECTIOUS DISEASES

*See INFECTIOUS DISEASES.*

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## NUISANCES

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### GENERAL PRINCIPLES

**Scope of Article.**—This article deals with the general principles of the law of public nuisances and the remedies available, with the exception of nuisances under the P.H.As. and nuisances connected with highways and bridges, which are dealt with separately. Private nuisances are dealt with only in so far as necessary in completely dealing with public nuisances. Nuisances created in the exercise of statutory powers and duties are also referred to.

Speaking generally, nuisances arising in the exercise of rights of property by either local authorities or private persons, will be excluded. Nuisances in respect of particular matters will be found dealt with elsewhere in this work under appropriate titles. [826]

**General Definition and Description.**—The term “nuisance” as used in law is not a term capable of any legal definition applicable

to all cases and useful in deciding them (a). In its widest sense nuisance means annoyance or inconvenience, but not every annoyance or inconvenience constitutes a nuisance in law, and of many things falling within this category the law takes no heed nor does it provide any remedy. They are *damna absque injuria* (b). In its legal sense, nuisance may be described as any wrongful and substantial prejudicial interference (as distinguished from trespass, see below) with the enjoyment of public or private rights through the act or omission of a person, either in the use or management of his own real or personal property, or in his personal conduct, or in his use of or dealings with public property, or in the purported exercise of his rights and powers.

Nuisance should be distinguished from trespass in that in trespass the immediate act itself which constitutes the offence occasions the injury, whereas in the case of nuisance not the act itself, but the consequences of such act become or are prejudicial to the sufferer's person or property (c).

The term "nuisance" when used in statutes generally bears the strict meaning of legal nuisance, but its interpretation is governed by the purposes and context of the particular statute. [827]

**Essential Factors.**—In order to constitute a nuisance in law it is essential that there should exist at least three elements :

- (i.) The act or omission which contributes to or causes the alleged nuisance must be wrongful, that is to say, it must be illegal *per se* (i.e. a violation, apart from its consequences, of statutory provisions or of common law rights) or unwarrantable as being in excess of statutory powers (d), or as being an exercise of legitimate rights in a manner which is unreasonable having regard to the surrounding circumstances (e).
- (ii.) The interference with the enjoyment of the right affected must be prejudicial; that is, damage, loss or inconvenience, actual or prospective, must be proved (f). But where there is a breach of duty or an illegal act, the law will presume resultant damage although no appreciable pecuniary loss be proved (g). This presumption is based in the case of private nuisances on the ground that by the continuance of an illegal act, a wrong-doer might gain a right to continue it (h).

(a) *Bamford v. Turnley* (1862), 31 L. J. (Q. B.) 286 (*per* POLLOCK, C.B., at p. 292); 36 Digest 160, 111.

(b) See judgments in *Bamford v. Turnley* (*supra*); *Harrison v. Good* (1871), L. R. 11 Eq. 338; 36 Digest 157, 11.

(c) *Reynolds v. Clark* (1725), Fortes. Rep. 212; 36 Digest 165, 71; *Horneard v. Banks* (1700), 2 Burr. 1114; 36 Digest 165, 72. For the distinction between "nuisance" and "negligence," see *Cunard v. Antifire, Ltd.*, [1938] 1 K. B. 551; Digest (Supp.).

(d) *Turnbridge Wells Corp'n. v. Baird*, [1896] A. C. 434; 26 Digest 320, 618 (interference with subsoil beyond statutory powers); *Westminster Corp'n. v. L. & N.W. Rail. Co.*, [1905] A. C. 426, reversing S.C. *sub nom.* L. & N.W. Rail. Co. v. *Westminster Corp'n.*, [1904] 1 Ch. 759; 42 Digest 724, 1440.

(e) Illustrations of this will be found in title HIGHWAY NUISANCES.

(f) *R. v. Bells* (1850), 10 Q. B. 1022; 36 Digest 158, 18; *A.-G. v. Kingston-on-Thames Corp'n.* (1895), 34 L. J. (Ch.) 481; 25 Digest 406, 336.

(g) *Fey v. Prentice* (1845), 1 C. B. 328; 36 Digest 162, 53; *Embrey v. Owen* (1851), 6 Exch. 358; 36 Digest 162, 53; *Harrop v. Hirst* (1868), L. R. 4 Exch. 43; 36 Digest 163, 58.

(h) *Harrop v. Hirst* (*supra*).

In the case of public nuisances, the presumption cannot be based on this ground, because no prescriptive right to commit a public nuisance can be obtained (*i*), but it is the duty of the Attorney-General to protect the public against an illegal act of this nature, and for this purpose it is necessary to prove actual or prospective damage (*k*).

- (iii.) The injury must be substantial; that is to say, it must not be merely sentimental, speculative, trifling (*l*) or temporary or evanescent in its continuance (*m*); but nothing can be so deemed which results in substantial damage, and regard is to be had therefore not merely to the duration of the thing complained of, but to the effects of the act or omission on the plaintiff (*n*).

The court will, however, be more strict as to proof of damage in the case of a nuisance only lasting a short time than in the case of a permanent one (*o*). [828]

**Circumstances to be Regarded.**—The question whether an act does or does not amount in law to a nuisance must in many cases depend upon circumstances, including the time, the place and manner of its commission; the character of the act; whether it is done wantonly or maliciously, or in the reasonable exercise of rights; and whether the effects of the act are transitory or permanent, occasional or continuous. In other words "whether anything is a nuisance or not is a question to be determined not merely by an abstract consideration of the thing itself, but in reference to its circumstances" (*p*).

The question of nuisance, therefore, is one of fact (*q*) and the reader is recommended to refer to the cases collected in 36 Digest, title "Nuisances," for illustrations of the application of the law to specific facts. [829]

**Classification.**—Nuisances are divisible into common law and statutory nuisances. A common law nuisance is one which apart from statute violates the principles which the common law lays down for the protection of the public and of individuals in the exercise and enjoyment of their rights.

A statutory nuisance is one which, whether or not it constitutes a nuisance at common law, is made a nuisance by statute either in

(*i*) *Per* Lord ELLENBOROUGH in *R. v. Cross* (1812), 3 Camp. 224; 36 Digest 218, 602; *Vooght v. Winch* (1819), 2 B. & Ald. 602; 44 Digest 119, 960.

(*k*) *A.-G. v. Shrewsbury (Kingsland) Bridge Co.* (1882), 21 Ch. D. 752; 36 Digest 163, 53; *A.-G. v. Cockermouth Local Board* (1874), L. R. 18 Eq. 172; 36 Digest 163, 59.

(*l*) *R. v. Betts* (1850), *ante* (slight obstruction of navigable river); *R. v. Lepine* (1866), 15 L. T. 158; 26 Digest 446, 1631 (inappreciable obstruction of highway).

(*m*) As to what is temporary, see *Inchbald v. Robinson* (1869), 4 Ch. App. 388; 36 Digest 185, 290. As to what is not temporary, see *Cokwell v. St. Pancras Borough Council*, [1904] 1 Ch. 707; 36 Digest 208, 209, 512.

(*n*) *Fritz v. Hobson* (1880), 14 Ch. D. 542, *per* FRY, J., at p. 556; 36 Digest 162, 43.

(*o*) *Inchbald v. Robinson* (*supra*); *Harrison v. Southwark and Vauxhall Water Co.*, [1891] 2 Ch. 409; 36 Digest 162, 44.

(*p*) *Sturges v. Bridgman* (1879), 11 Ch. D. 852, *per* THESIGER, L.J., at p. 865; 36 Digest 160, 30; see also *Bamford v. Turnley* (*ante*, p. 389) and *Christie v. Davey*, [1898] 1 Ch. 316; 36 Digest 195, 360.

(*q*) *A.-G. v. Burridge, Portsmouth Harbour Case* (1822), 10 Price 350; 36 Digest 158, 16; *R. v. Train* (1862), 2 B. & S. 640; 26 Digest 414, 1332; *R. v. Betts* (*supra*); *Bantwick v. Rogers* (1891), 7 T. L. R. 542; 26 Digest 430, 1496.

express terms or by implication. By the P.H.A. provision is made for the special treatment of certain specified nuisances and for their summary abatement, see the title **NUISANCES SUMMARILY ABATABLE UNDER PUBLIC HEALTH ACTS**. To these others have been added by various statutes.

Nuisances may also be divided into those which are public, general or common, and those which are private. A public nuisance is one which inflicts damage, injury or inconvenience upon all the King's subjects or upon all who come within the sphere of its operation, though it may affect some to a greater extent than others (*r*). A right to commit a public nuisance cannot be acquired by prescription (*s*), nor can any right to commit a public nuisance be granted to a person by the Crown (*t*), or by a local or highway authority (*u*), or by the conservators of a navigable river (*a*), unless of course they have statutory authority so to do.

A private nuisance is one which affects only private individuals who are immediately within the sphere of its operation, but does not injure or inconvenience others who are further removed from it; it may be even advantageous or pleasurable to some persons (*b*).

The importance of this classification lies chiefly in the remedies applicable, and the fact that no right of action exists in a private individual in respect of a public nuisance, unless he sustains special damage over and above that caused to the community in general (*c*). [380]

**Bye-Laws for Prevention of Nuisances.**—Powers to make bye-laws for the prevention of nuisances are conferred upon local authorities by various statutes for specific purposes. These are treated under the appropriate titles. [381]

#### NUISANCES CREATED IN EXERCISE OF SPECIAL STATUTORY POWERS

**In General.**—A nuisance, or a state of things which would constitute a nuisance if it were not legalised, can be justified as being authorised by statute when it can be shown that it is expressly or impliedly so authorised, or is the inevitable result of properly doing something which statutory undertakers are bound or authorised to do—in other words, that the legislature in granting the statutory powers has contemplated the creation of a nuisance in the proper discharge of those powers. Whether or not the legislature has authorised interference with private rights depends upon the construction of the statute under which the powers are exercised.

The burden of proof of the statutory authority to do the act complained of rests upon those who claim the right to do it, and they are

(*r*) See *Soltau v. De Held* (1851), 2 Sim. (N. s.) 138 (at p. 142, per KINDERSLEY, V.C.); 36 Digest 164, 66.

(*s*) *R. v. Cross* (ante, p. 300); *Vooght v. Winch* (ante, p. 390); *A.-G. v. Barnsley Corpn.* (1874), W. N. 37; 36 Digest 218, 603; *Sheringham U.D.C. v. Holsey* (1904), 91 L. T. 225; 36 Digest 213, 556.

(*t*) *A.-G. v. Burridge* (ante, p. 390); and see *Williams v. Wilcox* (1838), 8 Ad. & El. 314; 36 Digest 218, 606.

(*u*) *Harvey v. Truro R.D.C.*, [1903] 2 Ch. 688; 36 Digest 218, 601; *A.-G. v. Barker* (1900), 83 L. T. 245; 36 Digest 414, 1334.

(*a*) *R. v. Grosvenor (Lord)* (1819), 2 Stark 511, N.P.; 36 Digest 217, 600.

(*b*) See *Soltau v. De Held*, *supra*.

(*c*) *Vanderpant v. Mayfair Hotel Co.*, [1930] 1 Ch. 138; Digest (Supp.) (unloading of goods).



bound to show with sufficient clearness that the statute under which they act does either by express words or by necessary implication take away ordinary private rights (*d*).

Statutes which confer a special authority affecting the rights and property of individuals must be construed strictly against the parties to whom the authority is given and in favour of the persons affected (*e*).

Statutes authorising interference with the rights of private persons usually contain a clause providing for compensation for those injured. The absence from a statute of such a clause raises a presumption, though not a conclusive one, that private rights are not to be affected and that the legislature intends that the thing authorised shall only be done if it can be done without injury to others (*f*). [832]

**Duties Absolute and Discretionary.**—It is necessary to distinguish between duties which are absolute and those which are discretionary (*g*). Where an absolute duty is imposed, liability arises upon a breach of duty independently of any question of negligence (*h*), whereas where a discretionary duty only is imposed, liability for breach of that duty only arises on proof of either negligence or misfeasance (*i*). [833]

**Where Exercise is Compulsory or Nuisance Unavoidable.**—Where the legislature has authorised the exercise of certain powers in a specified manner and place and for a specific purpose, or where the unavoidable and material result of the proper exercise of such powers is the causing of a nuisance, no liability arises in respect of it (*k*). [834]

**Where Exercise is Permissive Only.**—Where persons, whether for a public purpose or for private profit, are authorised by statute to do specific works, they are bound to exercise their powers, both of original construction and subsequent repairs, with due regard to the common

(*d*) *Hammersmith, etc. Rail. Co. v. Brand* (1869), L. R. 4 H. L. 171, per BRAMWELL, B., at p. 180; 38 Digest 24, 132; *Metropolitan Asylum District v. Hill* (1881), 6 App. Cns. 193, per Lord BLACKBURN at p. 208; 38 Digest 44, 256.

(*e*) *R. v. Croke* (1774), 1 Cowp. 26; 38 Digest 19, 100; *Demerara Electric Co. v. White*, [1907] A. C. 890; 38 Digest 45, 267.

(*f*) See *L. & N.W. Rail. Co. v. Evans*, [1899] 1 Ch. 16 at p. 20, per BOWEN, L.J.; 38 Digest 31, 177.

(*g*) See *Metropolitan Asylum District v. Hill* (*supra*), and *London and Brighton Rail. Co. v. Truman* (1885), 11 App. Cns. 45; 38 Digest 48, 282.

(*h*) *Roths (Countess) v. Kirkcaldy Waterworks Commissioners* (1882), 7 App. Cns. 694; 43 Digest 1075, 119 (absolute duty imposed upon undertakers to make good damage occasioned by escape of water).

(*i*) *Hammond v. St. Pancras Vestry* (1874), L. R. 9 C. P. 316; 38 Digest 23, 135 (defendants not liable for not properly cleansing sewers vested in them); *Glossop v. Heston and Isleworth Local Board* (1870), 12 Ch. D. 102; 38 Digest 42, 249 (injunction against pollution refused on the ground that defendants had done no act to create the pollution but had only failed in their duty to provide sufficient drainage); *Stretton's Derby Brewery Co. v. Derby Corpn.*, [1894] 1 Ch. 431; 38 Digest 20, 140 (defendants not liable for sewer becoming inadequate owing to excessive drainage into it); *Queens of the River Steamship Navigation Co. v. Easton, Gibb & Co.* (1907), 96 L. T. 901; 38 Digest 27, 145 (defendants not liable for submerged obstruction to navigation); *Craig v. Wootkeich Borough Council* (1920), 36 T. L. R. 630; 38 Digest 34, 198 (sewer authority).

(*k*) *R. v. Pease* (1832), 4 B. & Ad. 30; 38 Digest 46, 275 (railway company not liable for nuisance occasioned by proximity of authorised line to highway); *Dixon v. Metropolitan Board of Works* (1881), 7 Q. B. D. 418; 38 Digest 48, 279 (defendants not liable for overcharged sewer); *Manchester Corpn. v. Farnworth*, [1900] A. C. 171; Digest (Supp.) (defendants liable for fumes from electric power station the inevitable result of statutory powers). See also other cases collected at 38 Digest 45 *et seq.*

law rights of others (l) and not occasion any needless injury to anyone, but they are not necessarily required to provide for every contingency (m). The powers must not be exercised in an oppressive manner or so as to cause injury, when this can be avoided without substantial interference with the statutory object (n). [885]

**Where Rights of Third Parties are Preserved.**—In many cases the statute which confers the powers expressly provides that nothing in the Act shall authorise the undertakers to exercise their powers so as to create a nuisance and that the rights of action of third parties shall remain unprejudiced. This amounts to a permission to exercise the powers, subject to an obligation on the part of the undertakers to bear the consequences of any nuisance occasioned thereby, whether caused by their negligence or otherwise (o). Thus various statutes allow the use of locomotives on highways subject to certain conditions (p) but preserve all liability for nuisances. A person therefore who uses a locomotive so as to create a nuisance is not exempt, even though he has fulfilled all the statutory conditions (q) and has not been guilty of any negligence in the construction or user of the engines (r), unless there are words in the statute expressly or impliedly limiting liability to a specific class of acts or omissions (s). Similar provisions preserving liability for nuisances are usually contained in statutes empowering bodies or persons to supply gas, electricity, or water. [836]

**Where Mode of Exercise is Discretionary.**—Where a public body is given a discretion in the exercise of powers conferred upon it by statute the court will not interfere with the *bona fide* and reasonable exercise

(l) See *Geddis v. Bann Reservoir Proprietors* (1878), 3 App. Cas. 430, per Lord BLACKBURN at pp. 455 and 456; 38 Digest 25, 137; *Metropolitan Asylum District v. Hill* (ante, p. 592).

(m) *R. v. East and West India Dock Co.* (1888), 60 L. T. 232; 20 Digest 581, 2715.

(n) For instances of cases where the right to commit a nuisance in exercise of permissive powers was negatived, see the following cases: *Vernon v. St. James, Westminster Vestry* (1880), 16 Ch. D. 440; 38 Digest 43, 251 (in providing public urinals); *Metropolitan Asylum District v. Hill* (supra) (in erection of a hospital for infectious disease so as to be a nuisance to private residents); *Canadian Pacific Railway v. Parke*, [1896] A. C. 535; 30 Digest 166, 77 (in irrigating lands by diverting streams and ruining the water off through adjoining lands); *Ogston v. Aberdeen District Tramways Co.*, [1897] A. C. 111; 36 Digest 220, 617 (in running tramways, as by using brine to keep the road clear of snow); *Tilting (T.), Ltd. v. Dick, Kerr & Co., Ltd.*, [1905] 1 K. B. 562; 38 Digest 30, 167 (by using raised rails during reconstruction); *Rattee v. Norwich Electric Tramway Co.* (1902), 18 T. L. R. 562, C. A.; 38 Digest 10, 87 (in the driving of cars); *Gas Light and Coke Co. v. St. Mary Abbott's, Kensington Vestry* (1885), 15 Q. B. D. 1; 38 Digest 44, 257 (in repairing roads by the use of heavy rollers).

(o) *A.-G. v. Gas Light & Coke Co.* (1877), 7 Ch. D. 217; 38 Digest 32, 139 (defendants liable for nuisance caused by gas supply).

(p) E.g. s. 18 of the Locomotive Act, 1861; 19 Halsbury's Statutes 58, repealed by the Road Traffic Act, 1930.

(q) *Powell v. Fall* (1880), 5 Q. B. D. 507; 26 Digest 431, 1501 (sparks from an engine setting haystacks on fire); *Bantwick v. Rogers* (1891), 7 T. L. R. 542; 26 Digest 430, 1496.

(r) *Chichester Corp'n. v. Foster*, [1906] 1 K. B. 167; 26 Digest 431, 1500 (damage to underground water mains by heavy locomotive); *A.-G. v. Scott*, [1905] 2 K. B. 160; 26 Digest 431, 1499 (damage to road by traction engine hauling stone).

(s) E.g. in *Brookhurst v. Manchester, Bury, Rochdale and Oldham Steam Tramways Co.* (1886), 17 Q. B. D. 118; 38 Digest 26, 135 (defendants not liable for pure accident caused by horse shying at tramcar, liability being limited by statute to damage caused by act or default of defendants).

of that discretion (*t*), provided of course that the thing done is that which the statute authorised. The court will be disposed to give to a public body which Parliament has entrusted with such a discretion, credit for being the best judge of what is necessary (*u*).

A public body who exercise such a statutory discretion in a proper manner are under no obligation to protect the interests of persons affected, unless such an obligation is imposed by the statute which confers the discretion (*a*). [837]

**Public Authorities Protection Act.**—Persons or bodies acting in pursuance of statutory powers may avail themselves of the protection afforded by sect. 1 of the Public Authorities Protection Act, 1893 (*b*): see title PUBLIC AUTHORITIES PROTECTION ACT.

On the construction of statutes and their application to the facts the final arbiters are the courts. Reference should be made as to decisions based upon particular facts to the cases in 38 Digest, pp. 15—57. [838]

#### REMEDIES FOR NUISANCES

There are four classes of remedies available for the punishment, prevention, or suppression of nuisances, namely:

- (i.) Summary proceedings for abatement and penalties;
- (ii.) Criminal proceedings by indictment;
- (iii.) Civil proceedings for injunction (or *mandamus*) or damages or both; and
- (iv.) Abatement without recourse to legal proceedings.

**Summary Proceedings.**—Penalties for statutory nuisances or breaches of orders relating to them may as a rule be recovered in a court of summary jurisdiction by the usual summary procedure (*c*), subject to any exceptional provisions in the statute which deals with the particular nuisance. Some statutes lay down special methods of summary procedure; by far the most important of these are the methods laid down by the P.H.As. which are dealt with in the title NUISANCES SUMMARILY ADATABLE UNDER PUBLIC HEALTH ACTS. [839]

**Criminal Proceedings by Indictment.**—Every public nuisance is an indictable misdemeanour at common law, punishable with imprisonment (with hard labour in certain cases) or fine or both.

Where a statute imposes a fine for an offence on proceedings before justices, that remedy (unless the statute expressly provides otherwise) may be merely concurrent with and may not exclude the common law remedy by indictment for the nuisance, where this existed pre-

(*t*) *Mayo v. Seaton U.D.C.* (1909), 68 J. P. 7; 38 Digest 21, 118 (public lavatory close to plaintiff's property); *Westminster Corpn. v. L. & N.W. Rail. Co.*, [1905] A. C. 426; 38 Digest 21, 119 (underground conveniences adjoining subway).

(*u*) *A.-G. v. G.E. Rail. Co.* (1871), 6 Ch. App. 572; 38 Digest 15, 80 (amount of water required for maintaining river in navigable state).

(*a*) *Southwark and Vauxhall Water Co. v. Wandsworth Board of Works*, [1898] 2 Ch. 608; 26 Digest 488, 1997 (no obligation on highway authority to lower water pipes in lowering surface of highway).

(*b*) 18 Halsbury's Statutes 455.

(*c*) See Summary Jurisdiction Act, 1879; 11 Halsbury's Statutes 323; and Stone's Justices' Manual.

viously (*d*). But if no offence at common law previously existed and the offence is created by the statute, an indictment will not lie (unless the Act expressly says so), and the procedure must be that prescribed by the statute (*d*). At the trial, the court may order the abatement of the nuisance (*e*).

If a breach of duty causing a nuisance is punishable in the case of a private person, a corporation guilty of that breach cannot escape (*f*) whether the breach be a non-feasance (*g*) or a misfeasance (*h*). The subject of indictments is sufficiently dealt with in the title ACTIONS BY AND AGAINST LOCAL AUTHORITIES in Vol. I. [840]

**Civil Proceedings.**—Civil proceedings, whether by an individual or a local authority, to restrain the commission or continuation of acts constituting a public nuisance, or to recover damages, must with the exceptions mentioned, *post*, be brought with the sanction or in the name of the Attorney-General (*i*), but whether brought by or in the name of the Attorney-General or by a private individual or local body, they take the form of an action in the Chancery Division or the King's Bench Division of the High Court (*k*), or where the damages do not exceed £100 in the county court.

The exceptional cases in which the Attorney-General need not be brought in are: (1) where the nuisance affects sewers or other property of which the local authority are the owners (*l*); (2) where a private right of the plaintiff is interfered with as well as a public right (*m*); and (3) where no private right is interfered with, but the plaintiff in respect of his public right suffers special damage peculiar to himself from the interference with the public right (*n*). See also Vol. I, pp. 87—90.

Where the fiat of the Attorney-General is necessary, regulations made by him require copies of the writ and the statement of claim, with a certificate of the solicitor that the relator is a proper person to commence the proceedings as relator and is competent to answer the costs, to be left at the Attorney-General's office at the Royal Courts of Justice. The decision of the Attorney-General, whether or not to sue on behalf of the relator, is absolute (*n*).

The principles upon which the court acts in granting or refusing injunctions generally apply to injunctions claimed in respect of

(*d*) See 2 Hawk P. C., c. 25, s. 4; *R. v. Hall*, [1801] 1 Q. B. 747; 42 Digest 781, 1631, where the subject is fully dealt with.

(*e*) As to the method by which this is done, see *Bagshaw v. Buxton Local Board of Health* (1875), 1 Ch. D. 220, at p. 224, *per* JESSEL, M.R.; 36 Digest 203, 447.

(*f*) *R. v. Tyler and International Commercial Co.*, [1891] 2 Q. B. 588, at p. 593; 13 Digest 400, 1297.

(*g*) *R. v. Birmingham and Gloucester Rail. Co.* (1842), 3 Q. B. 223; 18 Digest 409, 1292.

(*h*) *R. v. Great North of England Rail. Co.* (1846), 9 Q. B. 315; 13 Digest 410, 1298.

(*i*) *Baines v. Baker* (1782), Amb. 158; 86 Digest 210, 529; *Ware v. Regent's Canal Co.* (1858), 3 De G. & J. 212; 86 Digest 210, 531.

(*k*) *Wallasey Local Board v. Gracey* (1887), 36 Ch. D. 593; 36 Digest 210, 553.

(*l*) *Harwich Corpn. v. Brewster* (1901), 17 T. L. R. 274; 36 Digest 211, 556; *A.-G. v. Lagan*, [1891] 2 Q. B. 100; 33 Digest 24, 104.

(*m*) *Per* BUCKLEY, J., in *Boyce v. Paddington Borough Council*, [1903] 1 Ch. 109; 16 Digest 488, 3701. See also *Paddington Corpn. v. A.-G.*, [1906] A. C. 1.

(*n*) *L.C.C. v. A.-G.*, [1902] A. C. 165; 33 Digest 103, 697.

nuisances. See, generally, the title INJUNCTIONS in 18 Halsbury's Laws of England, 2nd ed.

As a rule, and subject to defences, an injunction will be granted to restrain the continuance of a nuisance where the injury is substantial (*o*), or where though slight it is of a continuing or recurring nature (*p*), or where the defendant claims the right to continue the action complained of (*q*) or threatens to do so (*r*), but an injunction will not usually be granted when the nuisance is of a temporary, trivial or occasional nature (*s*), or where the injury can be adequately compensated by damages (*t*). An injunction may be granted to restrain the commission of a prospective nuisance if it can be shown that there is a strong probability, almost amounting to a moral certainty, that the apprehended mischief will in fact arise (*u*), although if it appears that the apprehended damage if it comes will be substantial or irreparable the same degree of probability is not required (*a*). [841]

Damages may be claimed by a party injured by a nuisance either alone or in conjunction with a claim for an injunction. The most usual grounds for giving damages, instead of an injunction, are that the injury to the plaintiff's legal rights is small, is capable of being estimated in money and can be adequately compensated by a small money payment, and the case is one in which it would be oppressive to the defendant to grant an injunction (*b*). See, generally, the title DAMAGES in 10 Halsbury's Laws of England, 2nd ed.

The subjects of actions will be found dealt with in the title ACTIONS BY AND AGAINST LOCAL AUTHORITIES in Vol. I. [842]

**Abatement.** *By Private Persons.*—By abatement is meant the summary removal or remedy of a nuisance by the party injured without legal proceedings. The exercise of this remedy applicable only (except in the case of overhanging trees) in case of actions of commission (*e*) destroys any right of action in respect of the nuisance (*d*). If the nuisance is a public one, a private individual cannot of his own authority abate it unless it does him some special injury over and above that suffered by the rest of the public (*e*), and he can then only interfere with it so far as it causes such special injury to him and so far as may be necessary for him to exercise his public rights. He may not do damage

(a) *A.-G. v. Sheffield Gas Consumers Co.* (1853), 3 De G. M. & G. 304; 36 Digest 150, 26; *Soltau v. De Held* (ante, p. 391).

(p) *A.-G. v. Sheffield Gas Consumers Co.*, supra.

(q) *Swindon Waterworks Co. v. Wills and Berks Canal Navigation Co.* (1875), L. R. 7 H. L. 697; 36 Digest 227, 687; *Roberts v. Gwyrfai R.D.C.*, [1899] 2 Ch. 608; 38 Digest 20, 108.

(r) *Potts v. Levy* (1854), 2 Drew 272; 28 Digest 409, 353.

(s) *A.-G. v. Sheffield Gas Consumers Co.*, supra; *A.-G. v. Cambridge Consumers Gas Co.* (1868), 4 Ch. App. 71; 36 Digest 225, 666; *Swaine v. Great Northern Rail. Co.* (1864), 4 De G. J. & Sm. 211; 36 Digest 174, 196.

(t) *A.-G. v. Sheffield Gas Consumers Co.*, supra.

(u) *A.-G. v. Nottingham Corpn.*, [1904] 1 Ch. 673; 28 Digest 408, 337; and see *A.-G. v. Manchester Corpn.*, [1898] 2 Ch. 87; 28 Digest 407, 336, where all cases are collected and discussed.

(a) *Fletcher v. Bealey* (1885), 28 Ch. D. 688; 28 Digest 407, 334; *Ripon (Earl) v. Hobart* (1834), 3 My. & K. 169; 28 Digest 407, 332.

(b) See *Comper v. Laidler*, [1908] 2 Ch. 337; 28 Digest 416, 410.

(c) *Lonsdale (Earl) v. Nelson* (1823), 2 B. & C. 302, at p. 311; 36 Digest 202, 439; *Lemmon v. Webb*, [1895] A. C. 1; 36 Digest 205, 472.

(d) *Baten's Case* (1610), 9 Co. Rep. 53 b.; 36 Digest 202, 435.

(e) *Colchester Corpn. v. Brooke* (1846), 7 Q. B. 839; 36 Digest 203, 444; *Dimes v. Pelley* (1850), 15 Q. B. 276; 36 Digest 203, 445.

to the property of the person creating the nuisance if he is able to exercise his rights with reasonable convenience and without doing such damage (*f*). Where abatement involves entry on the land of another, *semble* notice is necessary (except in cases of emergency) before entry on the land to abate the nuisance (*g*). [843]

*By Local Authority.*—Some statutes make special provision for the abatement, more or less summarily, of nuisances, see for example, the Highway Act, 1835 (*h*), and the P.H.A., 1836 (*i*). All such powers must be exercised in strict conformity with the statute and within its limits (*h*). But over and beyond this statutory power of abatement, a local authority has a common law right to abate public nuisances which interfere with the public use of property vested in the authority, provided that no unnecessary damage be done in the abatement (*l*). Local authorities with the powers of a highway surveyor have at common law the right to abate highway nuisances without taking proceedings, and it seems without giving notice, but they do so at their own risk, and if unable to justify their action are liable to pay damages (*m*). [844]

**Nuisances from Sewers in London.**—Special provisions relating to the L.C.C. and metropolitan borough councils, prohibiting nuisances in connection with sewers and sewage works, occur in the P.H. (London) Act, 1936, sects. 21 and 31 (*n*), and illustrate different possible remedies. The former section requires that borough councils shall cause their sewers to be so kept as not to be a nuisance, and, in the absence of any special or alternative remedy, leaves any default to be dealt with in the manner above described. The latter section provides a special remedy; that is to say, on complaint of nuisance committed by the L.C.C. in the execution of works a Secretary of State may order proceedings to secure the prevention or abatement of the nuisance. [845]

(*f*) *Bateman v. Bluck* (1852), 18 Q. B. 870; 36 Digest 203, 440.

(*g*) See judgments in *Lemmon v. Webb*, *ante*, p. 396.

(*h*) 9 Halsbury's Statutes 59; see title HIGHWAY NUISANCES.

(*i*) *See* 91—110; 26 Halsbury's Statutes 804. See title NUISANCES SUMMARILY ABATABLE UNDER PUBLIC HEALTH ACTS.

(*k*) See e.g. *Evans v. Onkley* (1843), 1 Car. & Kir. 125; 26 Digest 435, 1529; *Lucen v. Kaye* (1825), 4 B. & C. 3; 26 Digest 386, 1146.

(*l*) See *R. v. Richmond, Surrey J.J.* (1860), 24 J. P. 422; 26 Digest 457, 1736; *Bogshaw v. Buxton Local Board of Health* (1875), 1 Ch. D. 220; 26 Digest 449, 1652.

(*m*) *Reynolds v. Prestelgn U.D.C.*, [1896] 1 Q. B. 604; 26 Digest 449, 1654;

*Harris v. Northampton County Council* (1897), 61 J. P. 590; 26 Digest 449, 1655;

*Louth U.D.C. v. West* (1896), 65 L. J. (Q. B.) 535; 26 Digest 391, 1176; *Mull v. Hawker* (1875), L. R. 10 Exch. 92; 26 Digest 450, 1659.

(*n*) 26 Geo. 5 & 1 Edw. 8, c. 50.

## NUISANCES IN CONNECTION WITH HIGHWAYS

*See* HIGHWAY NUISANCES.

## NUISANCES SUMMARILY ABATABLE UNDER THE PUBLIC HEALTH ACTS

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*See also title : NUISANCES.*

**Introduction.**—The P.H.A., 1936, gives to the local authority special powers to deal summarily with certain classes of nuisances. In this title, the references in brackets are to sections in that Act. Where, in the opinion of the local authority, such summary proceedings would afford an inadequate remedy, the local authority may in their own name take proceedings in the High Court for the purpose of securing the abatement or prohibition of the nuisance, and such proceedings are maintainable notwithstanding that the authority have suffered no damage from the nuisance (a). [846]

**Duty of Authority.**—It is by sect. 91 of the Act (b) the duty of every local authority to cause their district to be inspected from time to time for the detection of statutory nuisances requiring to be dealt with under Part III. of the P.H.A., 1936.

It is possible for any neglect on the part of the local authority in relation to a nuisance to be made good by complaint to a justice of the peace by any person aggrieved (c) by the nuisance (d). The complainant must apparently show that he is aggrieved by the nuisance on the date mentioned in the summons (e).

For the power of the Minister of Health to enforce the exercise of the powers of a local authority in relation to the abatement of nuisances, see sects. 322—325 of the Act (f).

As to the duties of a M.O.H. and a sanitary inspector in relation to

(a) P.H.A., 1936, s. 100; 29 Halsbury's Statutes 400.

(b) *Ibid.*, 394.

(c) The meaning of "aggrieved" in such a context has been before the courts in many cases which will be found in the notes to s. 253 of the P.H.A., 1875 (Lumley's Public Health, 10th ed.), and s. 298 of the P.H.A., 1936 (*ibid.*, 11th ed.).

(d) P.H.A., 1936, s. 90; 29 Halsbury's Statutes 398.

(e) *Hilton v. Hopwood* (1890), 44 Sol. Jo. 90, D. C.

(f) 29 Halsbury's Statutes 525—527.

nuisances, see titles MEDICAL OFFICER OF HEALTH and SANITARY INSPECTOR. [847]

**Nuisances Summarily Abatable.**—The offences which may be the subject of summary abatement under the Act are of two classes : those which constitute a nuisance, and those which are prejudicial to health. By the word "nuisance," as here used, a public nuisance is implied, or a nuisance which occasions discomfort to the public generally. A merely private nuisance which does not occasion prejudice to health will not come within the term. On the other hand, if the condition of the premises be prejudicial to the health of anyone, it is immaterial that no prejudice be directly sustained by the public. The intention of the Act, as was that of the Nuisances Removal Act, 1855, is "to secure the means of abating things that were either matters of public or private nuisance, of public nuisance as coming within the word 'nuisance,' and private as coming within the words 'prejudicial to health'" (g). "Prejudicial to health" means injurious, or likely to cause injury, to health (h).

The special provisions of the P.H.A., 1936, apply to the following nuisances :

- (1) Any premises in such a state as to be prejudicial to health or a nuisance (sect. 92).
- (2) Any animal kept in such a place or manner as to be prejudicial to health or a nuisance (*ibid.*).
- (3) Any accumulation or deposit which is prejudicial to health or a nuisance (*ibid.*).
- (4) Any dust or effluvia caused by any trade, business, manufacture or process and being prejudicial to the health of, or a nuisance to, the inhabitants of the neighbourhood (*ibid.*).
- (5) Certain conditions in factories, workshops and workplaces (see below) (*ibid.*).
- (6) Any installation for the combustion of fuel which is used in any manufacturing or trade process, or for working engines by steam, and which does not so far as practicable prevent the emission of smoke to the atmosphere ; and any chimney (not being the chimney of a private house) emitting smoke in such quantity as to be a nuisance (sect. 101).
- (7) Any well, tank, cistern, or water-butt used for the supply of water for domestic purposes which is so placed, constructed, or kept as to render the water therein liable to contamination prejudicial to health (sect. 141).
- (8) Any pond, pool, ditch, gutter or watercourse which is so foul or in such a state as to be prejudicial to health or a nuisance (sect. 259).
- (9) Any part of a watercourse, which is so choked or silted up as to obstruct or impede the proper flow of water and thereby to cause a nuisance, to give rise to conditions prejudicial to health (sect. 259).
- (10) Tents, vans, sheds, or similar structures used for human habitation, which are in such a state, or so overcrowded, as to be prejudicial to the health of the inmates ; and any such

(g) *Great Western Rail. Co. v. Bishop* (1872), L. R. 7 Q. B. 550 ; 36 Digest 177, 226, per Cockburn, C.J.

(h) P.H.A., 1936, s. 343 ; 20 Halsbury's Statutes 536.



structure the use of which, by reason of the absence of proper sanitary accommodation or otherwise gives rise, whether on the site or on other land, to a nuisance or to conditions prejudicial to health (sect. 268).

- (11) Unfenced shafts and outlets of mines, and unfenced quarries (i). [848]

*Premises.*—The expression “premises in such a state as to be a nuisance” does not extend to all premises on which a nuisance exists. “We do not attempt to define every class of case to which the first head applies, but we think it is confined to cases in which the premises themselves are decayed, dilapidated, dirty, or out of order, as, for instance, where houses have been inhabited by tenants whose habits and ways of life have rendered them filthy and impregnated with disease, or where foul matter has been allowed to soak into walls or floors, or where they are so dilapidated as to be a source of danger to life and limb” (k).

Hence these provisions for the summary suppression of nuisances were held not to apply to a nuisance arising from sewage tanks and works constructed under sect. 27 of the P.H.A., 1875 (l), by a local authority for the disposal of sewage (k).

It further appears that the expression “premises in such a state as to be a nuisance or injurious to health” refers to the condition of the premises themselves, and not to the use to which they are put. For example, a nuisance caused by the carrying on of a noxious trade would not be the subject of proceedings under these sections; nor would the establishment of a smallpox asylum or the like (m). [849]

*Animals kept so as to be a nuisance, etc.* See title ANIMALS, KEEPING OF.

*Accumulations or Deposits.*—No offence is committed by a person in respect of any accumulation or deposit necessary for the effectual carrying on of any business or manufacture if it be proved during legal proceedings that the accumulation or deposit has not been kept longer than is necessary for the purposes of the business or manufacture, and that the best practicable means have been taken for preventing it from becoming prejudicial to the health of, or a nuisance to, the inhabitants of the neighbourhood (sect. 94 (4)).

Various decisions suggest that the deposit must have some element of permanence. The nuisance may arise from smell or fumes. In the light of modern ideas it is submitted that the breeding of rats or house-flies in the deposit constitutes a nuisance. As to nuisances of this nature remediable under the Alkali, etc., Works Regulation Act, 1906, see sect. 92 (2) of the Act of 1936. [850]

*Dust or Effluvia.*—As to nuisances of this nature remediable under the Alkali, etc., Works Regulation Act, 1906, see sect. 92 (2) of the Act of 1936. For definition of “dust,” see sect. 110. [851]

*Factories, Workshops and Workplaces.*—The following conditions

(i) Coal Mines Act, 1911, s. 26; 12 Halsbury's Statutes 96; Metalliferous Mines Regulation Act, 1872, s. 13; *ibid.*, 23; Quarry (Fencing) Act, 1887, s. 3; *ibid.*, 41.

(k) *R. v. Parby* (1889), 22 Q. B. D. 520, *per WILLS, J.*, at p. 525; 53 J. P. 327; 36 Digest 178, 234.

(l) 18 Halsbury's Statutes 637.

(m) *Metropolitan Asylum District (Managers) v. Hill* (1881), 6 App. Cas. 193; 45 J. P. 664; 38 Digest 44, 266.

found in a domestic factory (*n*), a workshop (*o*), or a workplace constitute nuisances of the kind under discussion, this modification of the provisions of sect. 92 of the P.H.A., 1936, resulting from the operation of the Factory and Workshop Acts, 1901 and 1907:

(i.) An uncleanly state; (ii.) insufficient provision of means of ventilation; (iii.) insufficient maintenance of means of ventilation (*p*); (iv.) so overcrowded while work is carried on as to be prejudicial to the health of those employed therein; (v.) not kept free from noxious effluvia; (vi.) a workshop, not being one conducted on the system of not employing any women, young persons or children therein, and not being a domestic workshop, in which a process is carried on which renders the floor liable to be wet to such an extent that the wet is capable of being removed by drainage, and in which adequate means for draining off the wet are not provided.

Note as regards ventilation and overcrowding that in determining whether any factory or workshop is provided with sufficient means of ventilation or whether any factory or workshop is so overcrowded as to be prejudicial to health, regard must be had to the requirements of the Factory and Workshop Act, 1901, and of any order made by the Secretary of State thereunder, with respect to ventilation or overcrowding in factories and workshops (*q*).

For definitions of factory, workshop and workplace, see P.H.A., 1936, sect. 843 (*r*).

See also title **Factories and Workshops**. [852]

*Installations and Chimneys*.—See title **SMOKE ABATEMENT**.

*Wells, Tanks, Cisterns, etc.*—By sect. 12 of the Waterworks Clauses Act, 1893, which is incorporated in the P.H.A., 1936, by sect. 120 of the latter Act, a supply of water for domestic purposes shall not include a supply of water for cattle, or for horses, or for washing carriages where such horses or carriages are kept for sale or hire by a common carrier, or a supply for any trade, manufacture or business, or for watering gardens, or for fountains, or for any ornamental purpose. See, further, title **WATER SUPPLY**. [853]

*Ponds, Pools, Ditches, Gutters, Watercourses*.—See also the title **DITCHES**.

*Choked or Silted Watercourses*.—Such as are ordinarily navigated by vessels employed in the carriage of goods by water are not within this power (sect. 259).

*Tents, Sheds and Vans*.—See this title.

*Unfenced Shafts and Outlets of Mines*.—The mines controlled are those of coal, stratified ironstone, shale and fire-clay (*s*). [854]

*Unfenced Shafts and Side Entrances of Metalliferous Mines*.—For a shaft or side entrance to constitute a statutory nuisance it must be either unfenced and within fifty yards of a highway, road, footpath,

(*n*) Defined in the Factory and Workshop Act, 1901, s. 115; 8 Halsbury's Statutes 377. At the time of going to press, there is before Parliament a Bill introduced by the Government—the Factories Bill, 1937—which if it passes will modify these Acts.

(*o*) *Ibid.*, s. 140, and see also s. 1 of Factory and Workshop Act, 1907; 8 Halsbury's Statutes 397.

(*p*) Note as regards (ii.) and (iii.) that shops to which the Shops Act, 1934, applies are not included.

(*q*) P.H.A., 1936, s. 92 (4); 20 Halsbury's Statutes 395.

(*r*) See also note (*p*), *supra*.

(*s*) See statutes cited in note (*t*), *ante*, and see title **QUARRIES AND MINESHAPTS**. L.G.L. IX.—26

or place of public resort, or be in open and unenclosed land, or be required to be fenced by an inspector of mines. See Metalliferous Mines Regulation Act, 1872, sect. 13 (i), and see title QUARRIES AND MINESHAFTS. [855]

*Unfenced Quarries.*—See Quarry (Fencing) Act, 1887 (a), and title QUARRIES AND MINESHAFTS.

**Information of Existence of Nuisance.**—Complaints of nuisances come from many sources; even anonymous complaints cannot be disregarded as a matter of course. They are usually entered in order in the "complaint book," where they remain on record until "written off" by being remedied or otherwise. It is usual, except where nuisance urgently calls for abatement, for the sanitary inspector concerned to call the responsible person's attention to the matter in a manner which has not the force of an abatement notice, given by direction of the local authority. This is sometimes called an "intimation notice"; it may be in the form of a letter or drawn up as a notice. In a large proportion of cases the abatement of the nuisance follows the sending of the intimation notice. In the case of a smoke nuisance the authorised officer detecting the nuisance must, as soon as practicable after he has become aware of it, notify the occupier of the premises on which the nuisance exists, and confirm this notification in writing within twenty-four hours (b). For a specimen form of intimation notice, see *Encyclopædia of Forms and Precedents*, Vol. XII., p. 278. [856]

**The Abatement Notice.**—Where a local authority are satisfied of the existence of a statutory nuisance, they are required to serve a notice on the person by whose act or default or sufferance the nuisance arises or continues, requiring him to abate the nuisance and to execute such works and take such steps as may be necessary for that purpose. If such person cannot be found, the notice is to be served on the owner or occupier of the premises on which the nuisance arises, unless it is clear that the nuisance does not arise or continue by the act, default or sufferance of the owner or occupier, in which case the local authority may themselves do forthwith what they consider necessary to abate the nuisance and to prevent a recurrence of it. Where the nuisance arises from any defect of a structural character the notice must be served on the owner (c).

The statutory notice to abate a nuisance must be given by, or by the direction of, the local authority. It cannot be given by their officer on his own initiative. The question therefore arises how a nuisance which calls for immediate abatement can be dealt with, without convening a meeting of the authority. In such a case the authorised officer issues the notice under his signature and if found necessary he applies for a summons. It is sufficient to ratify the issue of the notice and the subsequent proceedings if the local authority at any time before the hearing of the summons pass the necessary resolution (d). The authority may pass separate resolutions authorising the service of the notice and the issue of the summons. Otherwise the

(i) 13 Halsbury's Statutes 23.

(a) *Ibid.*, 41.

(b) P.H.A., 1986, s. 102; 29 Halsbury's Statutes 400.

(c) *Ibid.*, s. 93.

(d) See *Firth v. Staines*, [1897] 2 Q. B. 70; 61 J. P. 452; 38 Digest 169, 130; and *R. v. Chapman*, [1918] 2 K. B. 298; 82 J. P. 229; 86 Digest 233, 729.

resolution authorising the service may authorise at the same time all necessary proceedings to secure the abatement or prohibition of the nuisance.

An abatement notice must specify, where possible, the works to be executed and steps to be taken for abating the nuisance, failing which the notice is bad. A time within which it is suggested the works should be executed may usefully be specified. An abatement notice must be in writing (e).

In all procedure under the Act in respect of a nuisance, and where it is not practicable after reasonable inquiry to ascertain the name and address of an owner or occupier, or if the premises affected are unoccupied, it is sufficient to use the terms "owner" or "occupier" of such premises, without name or further description (f). [357]

**Who is Liable for the Nuisance.**—The person to be held primarily responsible for the existence or continuance of a nuisance is the person by whose act, default, or sufferance the nuisance arises or continues. To this rule there are two exceptions: (1) if such person cannot be found, the owner or the occupier of the premises may be liable; and (2) where the nuisance arises from any defect of a structural character, the notice must be served on the owner (g).

If the person causing the nuisance cannot be found and it is clear that the nuisance does not arise or continue by the act, default or sufferance of the owner or the occupier of the premises, the local authority may themselves do forthwith what they consider necessary to abate the nuisance and to prevent a recurrence thereof (g).

Where proceedings are brought in respect of a nuisance by dust or effluvia caused by any trade, business, manufacture or process, it is a defence for the defendant to prove that the best practicable means have been taken for preventing, or counteracting the effect of, the dust or effluvia (h).

As regards a choked or silted watercourse no liability to abate the nuisance is imposed on any person other than the person by whose act or default the nuisance arises or continues (i).

Where a nuisance by reason of the absence of proper sanitary accommodation, or otherwise, is alleged to arise, wholly or in part, from the use for human habitation of any tent, van, shed or similar structure, then, without prejudice to the liability of the occupants or other users thereof, an abatement notice may be served on, and proceedings may be taken against, the occupier of the land on which the tent, van, shed or other structure is erected or stationed (k).

As regards an unfenced shaft or side entrance of a metalliferous mine, the liability to abate such a nuisance is on either the owner, or some other person interested in the minerals of the mine (l).

The liability is similar as regards an unfenced shaft or outlet of a mine which has been abandoned or discontinued (m).

(e) For a form of statutory notice, see 10 Ency. Forms 472, but the Minister of Health may by regulations prescribe the form of notice. If he does so, such a form, or a form to the like effect, may be used (P.H.A., 1936, s. 253).

(f) P.H.A., 1936, s. 255.

(g) *Ibid.*, s. 93; 29 Halsbury's Statutes 396.

(h) *Ibid.*, s. 94 (4).

(i) *Ibid.*, s. 259 (1).

(k) *Ibid.*, s. 268 (3).

(l) Metalliferous Mines Regulation Act, 1872, s. 13; 12 Halsbury's Statutes 23.

(m) Coal Mines Act, 1911, s. 20; *ibid.*, 96.

As to the meaning of the word "owner," "occupier," see title DEFINITIONS (STATUTORY). [858]

**Proceedings after Default on Notice.**—If the person on whom an abatement notice has been served makes default in complying with any of its requirements, or if the nuisance, although abated since the service of the notice, is in the opinion of the local authority likely to recur on the same premises, the local authority must cause a complaint to be made to a justice of the peace, and the justice must thereupon issue a summons requiring the person on whom the notice was served to appear before a court of summary jurisdiction (*n*). Once the authority have given notice of the existence of a nuisance, and requiring its abatement, they have no discretion in the matter, but are bound to see that the notice is complied with, and on non-compliance to take the necessary proceedings before the justices.

As to the Form of Summons, see P.H.A., 1936, sect. 283. [859]

**Who May be Complainants.**—Besides the local authority, other persons may complain to a justice of the peace of the existence of a statutory nuisance under the Act, that is, any person aggrieved by the nuisance. In all such cases all the proceedings, with their incidents and consequences as to the making of orders, penalties for disobedience of orders and otherwise, are the same as if the complaint had been made by the local authority. Any order made in such proceedings may, if the court after giving the local authority an opportunity of being heard thinks fit, direct the authority to abate the nuisance (*o*). [860]

**Various Defences.**—It appears that a nuisance order can be made even though its effect is to require a person on whom it is made to do an act amounting to a trespass. In *Parker v. Inge* (*p*) the premises were occupied by a tenant. The owner, even though he could not enter upon the premises and execute certain works without the tenant's permission, was held to have made default in complying with the requisitions of a statutory notice.

If the owner is unable to obtain permission to enter on premises to execute the necessary works, it may be presumed that the court might be satisfied that he had a reasonable excuse for his default, but as to the power of the court to require an occupier to permit works to be executed by the owner, see sect. 289 of the Act.

A rent-collector, who is the "owner" of premises at the time of the service of a statutory notice, cannot absolve himself from responsibility by resigning his agency, and a nuisance order may be made on him, although it is ineffective (*q*). In practice a fresh abatement notice would normally be served on the new collector.

In any proceedings for the emission from a chimney of smoke, other than black smoke, in such a quantity as to be a nuisance, it is a defence for the defendant to prove that he has taken the "best practicable means" for preventing the nuisance. See, further, title SMOKE ABATEMENT.

Where proceedings are brought in respect of a nuisance from dust

(*n*) P.H.A., 1936, s. 94 (1); 29 Halsbury's Statutes 390.

(*o*) *Ibid.*, s. 99.

(*p*) (1880), 17 Q. B. D. 584; 51 J. P. 20; 36 Digest 285, 747.

(*q*) See *Broadbent v. Shepherd*, [1901] 2 K. B. 274; 65 J. P. 499; 36 Digest 287, 765.

or effluvia caused by any trade, business, manufacture or process, it is a defence for the defendant to prove that the best practicable means have been taken for preventing, or counteracting the effect of, the dust or effluvia.

As to a possible defence in the case of a nuisance from an accumulation or deposit, *vide ante*, p. 400. [§61]

**The Nuisance Order.**—Upon proof that the alleged nuisance exists, or that, although abated, it is likely to recur on the same premises, the court must make a nuisance order for either or both of the following purposes: either an order to comply with all or any of the requirements of the abatement notice, or otherwise to abate the nuisance within a time specified in the order, and to execute any works necessary for that purpose; or an order prohibiting a recurrence of the nuisance, and requiring the defendant, within a time specified in the order, to execute any works necessary to prevent a recurrence; or an order both requiring abatement and prohibiting a recurrence of the nuisance. The court has also power to impose a penalty not exceeding £5 on the defendant (r).

Where it is proved that the alleged nuisance existed at the date of the service of the abatement notice and that at the date of the making of the complaint it either still exists or is likely to recur, then, whether or not at the date of the hearing it still exists or is likely to recur, the court must order the defendant to pay to the local authority such reasonable sum as the court may determine in respect of the expenses incurred by the authority in, or in connection with, the making of the complaint and the proceedings before the court (s).

As to the penalty in the case of a smoke nuisance, see title SMOKE ABATEMENT.

When a nuisance order is made necessitating any works, it must specify the works which the defendant is to execute, and an order omitting this is bad (t). If, however, the nuisance is of such character as not to require any works, an order merely directing the abatement of the nuisance will be good without specifying any works (u).

As to the form of a nuisance order, see sect. 283 of the Act (a).

Where the person by whose act or default the nuisance arises, or the owner or occupier of the premises cannot be found, a nuisance order may be addressed to, and executed by, the local authority.

Where a nuisance proved to exist is such as to render a building, in the opinion of the court, unfit for human habitation, the nuisance order may prohibit the use of the building for that purpose, until a court of summary jurisdiction, being satisfied that it has been rendered fit for human habitation, withdraws the prohibition (b).

The powers of a court before which proceedings are brought in respect of a statutory nuisance caused by, or arising in connection with, a tent, van, shed or similar structure used for human habitation, include power to make an order prohibiting the use for human habitation of the tent, van, shed or other structure in question at such places, or within such area, as may be specified in the order (c).

(r) P.H.A., 1936, s. 94 (2).

(s) *Ibid.*, s. 94 (3).

(t) *R. v. Whelan* (1885), 16 Q. B. D. 84; 50 J. P. 424; 36 Digest 236, 756.

(u) *Millard v. Wastell*, [1898] 1 Q. B. 342; 62 J. P. 135; 36 Digest 232, 725.

(a) See also note (c), *ante*, p. 408.

(b) P.H.A., 1936, s. 94 (2); 29 Halsbury's Statutes 396.

(c) *Ibid.*, s. 268 (5).

In determining whether the best practicable means have been taken for preventing, or for counteracting the effect of, a nuisance, a court must have regard to cost and to local conditions and circumstances (*d*).

As to appeals to quarter sessions against the decisions of justices, see sect. 301. Quarter sessions cannot upon an appeal consider the validity of the abatement notice (*e*). [862]

**Consequences of not Complying with Order.**—Any person who fails without reasonable excuse to comply with, or knowingly contravenes, a nuisance order is liable to a fine not exceeding five pounds and to a further fine not exceeding forty shillings for each day on which the offence continues after conviction therefor, and where a nuisance order has not been complied with, the local authority may abate the nuisance, and do whatever may be necessary in execution of the order (*f*).

As to the penalties in the case of a smoke nuisance, see title SMOKE ABATEMENT. As to continuing penalties, see sect. 297. [863]

**Nuisances by Joint Action.**—Where a statutory nuisance appears to be wholly or partly caused by the acts or defaults of two or more persons, proceedings may be instituted against any one of them, or all or any two or more of them may be included in the same proceedings; and any one or more of the persons proceeded against may be ordered to abate the nuisance, so far as it appears to the court to be caused by his or their acts or defaults, or may be prohibited from continuing any acts or defaults which, in the opinion of the court, contribute to the nuisance, or may be fined or otherwise punished, notwithstanding that the acts or defaults of any one of those persons would not separately have caused a nuisance, and the costs may be apportioned as the court may deem fair and reasonable. [864]

Proceedings against several persons included in one complaint need not abate by reason of the death of any of the persons so included, but may be carried on as if the deceased person had not been so included.

Where some only of the persons by whose acts or defaults a nuisance has been caused have been proceeded against, they may, without prejudice to any other remedy, recover in a summary manner from the other persons who were not proceeded against a proportionate part of the costs of, and incidental to, the proceedings and the abatement of the nuisance, and of any fine or costs ordered to be paid in the proceedings (*g*). [865]

**Nuisance Caused Outside the District.**—Where a nuisance within, or affecting any part of, the district of a local authority appears to be wholly or partly caused by some act or default committed or taking place outside their district, the authority may take, or cause to be taken, against any person in respect of that act or default any proceedings in relation to nuisances authorised in the like cases, and with the like incidents and consequences, as if the act or default were committed or took place wholly within their district, but summary proceedings may only be taken before a court having jurisdiction in the place where the act or default is alleged to be committed or to take place (*h*). [866]

(*d*) P.H.A., 1936, s. 110 (2).

(*e*) *Ager v. Gates* (1934), 98 J. P. 223; Digest (Supp.).

(*f*) P.H.A., 1936, s. 95.

(*g*) *Ibid.*, s. 97; 29 Halsbury's Statutes 398.

(*h*) *Ibid.*, s. 98.

**Entry and Obstruction.**—An authorised officer of a local authority has on producing, if so required, some duly authenticated document showing his authority, a general right to enter any premises at all reasonable hours :

- (a) for the purpose of ascertaining whether or not circumstances exist which would authorise or require the local authority to take any action as regards a statutory nuisance ;
- (b) for the purpose of taking any action, or executing any work, authorised or required to be taken, or executed, by the local authority in relation to such a nuisance.

Admission to any premises not being a factory, workshop or work-place may not, however, be demanded as of right unless twenty-four hours' notice of the intended entry has been given to the occupier.

If it is shown to the satisfaction of a justice of the peace on sworn information in writing :

- (a) that admission to any premises has been refused, or that refusal is apprehended, or that the premises are unoccupied or the occupier is temporarily absent, or that the case is one of urgency, or that an application for admission would defeat the object of the entry ; and
- (b) that there is reasonable ground for entry into the premises for any such purpose as aforesaid,

the justice may by warrant under his hand authorise the local authority by any authorised officer to enter the premises, if need be by force.

Such a warrant may not, however, be issued unless the justice is satisfied either that notice of the intention to apply for a warrant has been given to the occupier, or that the premises are unoccupied, or that the occupier is temporarily absent, or that the case is one of urgency, or that the giving of such notice would defeat the object of the entry.

An authorised officer, lawfully entering any premises, may take with him such other persons as he may require, and on leaving any unoccupied premises which he has entered by virtue of a warrant must leave them as effectually secured against trespassers as he found them.

A warrant continues in force until the purpose for which the entry is necessary has been satisfied. [867]

A person who wilfully obstructs any person acting in the execution of the P.H.A., 1936, or of any order or warrant made or issued thereunder is liable to a fine not exceeding five pounds and to a further fine not exceeding five pounds for each day on which the offence continues after conviction therefor.

If on a complaint made by the owner of any premises, it appears to a court of summary jurisdiction that the occupier of those premises prevents the owner from executing any work which he is by or under the Act required to execute, the court may order the occupier to permit the execution of the work (i).

It appears that there is no initial right of entry by compulsion against the will of the occupier. To do this an order of justices must be obtained, if and after the occupier has refused admission (i).

It is submitted also that the right to enter is not absolute in the

(i) P.H.A., 1936, ss. 287—89 ; 29 Halsbury's Statutes 507—509.

(k) *Consett Urban Council v. Crawford*, [1906] 2 K. B. 183 ; 67 J. P. 309 ; 36 Digest 239, 776.



sense that a justice must, when required by a local authority, issue a warrant authorising entry to premises, but that he has a discretion in the matter, and before making the order may consider whether there are reasonable grounds for the suspicion that a nuisance exists, and for this purpose he may receive evidence of the alleged nuisance. If the warrant is issued, it must show that it has reference to a particular subject-matter.

As to the right of entry of the local authority to factories and workshops, see, further, the Factory and Workshop Act, 1901 (*l*), and the title FACTORIES AND WORKSHOPS (*m*).

A person who, having a right of entry to a factory, workshop or workplace, is admitted therein and discloses to any person any information obtained by him in such a place with regard to any manufacturing process or trade secret, is, unless such disclosure is made in the performance of his duty, liable to a fine not exceeding one hundred pounds or to imprisonment for a term not exceeding three months. [868]

**Expenses of the Local Authority.**—Any expenses reasonably incurred by a local authority in abating, or preventing the recurrence of, a statutory nuisance in respect of which a nuisance order has been made may be recovered by them :

- (a) where the order was made on some person other than the local authority, from that person ;
- (b) where the order was made on the local authority, from the person by whose act or default the nuisance was caused,

and, in either case, if the person in question is the owner of the premises, from any person who is for the time being the owner thereof.

In proceedings to recover any such expenses, the court has power to apportion the expenses between persons by whose acts or defaults the nuisance is caused in such manner as the court may deem fair and reasonable (*n*).

The local authority have no power to recover any expenses incurred by them in abating a nuisance, before a nuisance order has been made.

For the power of the local authority to sell any materials removed by them from any premises in abating a nuisance, see sect. 276 of the Act of 1936. [869]

**Miscellaneous.**—As to nuisances on ships and boats, see sect. 207 of the Act of 1936 (*o*). As to nuisances on Crown property, see title CROWN PROPERTY.

**London.**—The P.H. (London) Act, 1936, sect. 116 (1) (*p*), provides that a sanitary authority may require the removal or alteration of sanitary conveniences erected in or accessible from any street and which are so placed or constructed as to be a nuisance or offensive to public decency.

Sect. 121 of the Act enables the City corporation and metropolitan borough councils to take action for the purpose of abating nuisance, annoyance or damage caused by the congregation of house doves or

(*l*) Ss. 110, 121 and 125 ; 8 Halsbury's Statutes 581—83.

(*m*) Note, however, that the Factories Bill, 1937, which is before Parliament at the date of going to press, may alter the position.

(*n*) P.H.A., 1936, s. 96 ; 29 Halsbury's Statutes 398.

(*o*) *Ibid.*

(*p*) 26 Geo. 5 & 1 Edw. 8, c. 50.

pigeons. The local authority is empowered to seize and destroy or sell or dispose of birds in excess of such number as the authority considers reasonable. The authority may not, however, knowingly destroy or dispose of birds belonging to any person.

It is to be noted that the P.H.A. as regards the abating of nuisances does not apply to London. The P.H. (London) Act, 1936, should be referred to. Sect. 82 (1) (a), (c) of that Act contains provisions similar to those of sub-sect. (1) (a) (as regards premises), and (c) (as regards accumulations or deposits) of sect. 92 of the P.H.A., 1936. Sect. 82 (2) contains a saving as to accumulations or deposits for business purposes. The following are also nuisances to be dealt with summarily under the Act of 1936 :

Any pool, ditch, gutter, watercourse, cistern, sanitary convenience, cesspool, drain, dung-pit or ashpit so foul or in such a state as to be a nuisance or injurious or dangerous to health (*q*).

Any house or part of a house so overcrowded as to be injurious or dangerous to the health of the inmates (*r*).

Any absence from premises of water fittings prescribed by bye-laws under the Metropolitan Water Board Act, 1932 (*s*).

An occupied house without a proper and sufficient supply of water (*t*). See sect. 98 as to cutting off water supply by the suppliers, and the giving of notice thereof to the sanitary authorities.

Any animal kept in such a place or manner as to be a nuisance or injurious or dangerous to health (*u*). Under sect. 118 the sanitary authorities must make bye-laws for the prevention of nuisances of this kind.

Any factory, workshop or workplace which is not a factory subject to the provisions of the Factory and Workshop Act, 1901, relating to cleanliness, ventilation and overcrowding, and (1) is not kept in a cleanly state and free from the effluvia arising from any drain, sanitary convenience or other nuisance, or (2) is not ventilated in such a manner as to render harmless as far as practicable any gases, vapours, dust or other impurities generated in the course of the work carried on therein that are a nuisance or injurious or dangerous to health, or (3) is so overcrowded while work is carried on as to be injurious or dangerous to the health of those employed therein (*a*).

Premises used by a sanitary authority for the treatment or disposal of street or house refuse (as distinct from removal) which are a nuisance or injurious or dangerous to health (*b*). [870]

The procedure to be followed for the abatement of the nuisances under the P.H. (London) Act, 1936, is provided in the Fifth Schedule to the Act and is in many respects similar to that laid down in the P.H.A., 1936. There are, however, certain differences, and the following paragraphs of the Schedule should be referred to :

Paras. 2 and 3—information of nuisances to sanitary authority ; paras. 4 to 6—notice requiring abatement of nuisances ; paras. 7 to 9, 12, 16—on non-compliance with notice, order to be made ; para. 10—provision in case of two convictions for overcrowding ;

(*q*) P.H. (London) Act, 1936, s. 82 (1) (b) ; 26 Geo. 5 & 1 Edw. 8, c. 50.

(*r*) *Ibid.*, s. 82 (1) (d), (3).

(*t*) *Ibid.*, s. 65.

(*a*) *Ibid.*, s. 128.

(*s*) *Ibid.*, s. 97.

(*u*) *Ibid.*, s. 118.

(*b*) *Ibid.*, s. 138 (2).

para. 11—in certain cases order may be addressed to sanitary authority; paras. 13 to 15—provision as to appeal against order; para. 16—power of entry; para. 17—power to sell manure, etc.; paras. 18 and 19—costs of execution of provisions relating to nuisances; para. 20—power of individual to complain to justice of nuisance; para. 21—proceedings in High Court for abatement of nuisance; para. 22—power to proceed where case of nuisance arises without district. See also sect. 137 of the Act—duty of sanitary authority to complain to Justice of nuisance arising from offensive trade.

Sect. 138 (c) gives power to the L.C.C. to take action as if the council were a sanitary authority in relation to nuisances created by the sanitary authority in dealing with refuse.

Sect. 104 provides penalties for injuring closets, etc., so as to cause a nuisance.

Sect. 84 gives power to sanitary authorities (City corporation and metropolitan borough councils) and the county council as to bye-laws relating to the cleansing of streets and the prevention of nuisances.

Under sect. 139 sanitary authorities must make bye-laws for preventing nuisances from offensive matter running out from factories and certain other trade premises into any uncovered place.

Sect. 119 provides a penalty for keeping swine in a place in which the feeding or keeping may create a nuisance or be injurious to health. [871]

As to nuisances arising from offensive trades, see title OFFENSIVE TRADES. Nuisances arising from smoke are dealt with in sects. 148—150. The sections are comparable with sects. 101—103 of the P.H.A., 1930, but chimneys of ships sending forth black smoke in such a quantity as to be a nuisance are included as a "smoke nuisance."

Sect. 147 contains provisions and penalties relative to the consumption of their own smoke by furnaces, steam vessels, etc. The provisions of sects. 147, 148 may, in a special case and at the request of the sanitary authority, be enforced by the L.C.C. The L.C.C. may also enforce the provisions in respect of premises belonging to a sanitary authority.

See also sects. 83, 104, 109—111, 116, as to particular powers of sanitary authorities and penalties in relation to water closets, drains, offensive ditches and sanitary conveniences in cases where, *inter alia*, a nuisance is created thereby.

Sect. 185 provides that tents, sheds and vans used for human habitation, which are in such a state or so overcrowded as to be a nuisance or injurious or dangerous to health shall be nuisances which may be summarily abated.

As to powers and duties of sanitary inspectors, see sect. 9. For jurisdiction as to ships, see sect. 3; for power of entry generally and legal proceedings, see sects. 274, 275, and 279 to 284; for appeals, see sects. 285, 286; for notices, sects. 300—302; for the power of the L.C.C. and the Minister of Health to proceed on default by a sanitary authority, see sects. 291, 292 and 295. [872]

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(c) P.H. (London) Act, 1936; 26 Geo. 5 & 1 Edw. 8, c. 50.

## NUMBERING OF HOUSES

*See NAMING OF STREETS AND NUMBERING OF HOUSES.*

## NURSERY GROUNDS

*See DERATING.*

## NURSERY SCHOOLS

*See EDUCATION SPECIAL SERVICES.*

## NURSES

*See HOSPITAL STAFF.*

## NURSING HOMES

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*See also title : MATERNITY AND CHILD WELFARE .*

**Introductory.**—The P.H.A., 1936 (a), provides for the registration and inspection of nursing homes. A nursing home is defined by sect. 199 of the Act to mean premises used or intended for receiving and providing nursing for persons suffering from sickness, injury or infirmity. Infirmity is not defined, but it may be held to include great physical enfeeblement from advanced age or other cause. The phrase "nursing home" includes a maternity home into which pregnant women or women immediately after childbirth are received, but does not include an institution governed by the Lunacy and Mental Treatment

(a) See ss. 187 to 195 ; 20 Halsbury's Statutes 452—457.

Acts, 1890 to 1930, or the Mental Deficiency Acts, 1913 to 1927 (b); nor does it include a hospital maintained or controlled by a Government department or a local authority, or by a body constituted by special Act or incorporated by Royal Charter. [873]

**Local Authorities.**—The registering authorities are the county and county borough councils and they have also a power of inspection and of making bye-laws. The county council may, however, on application from a district council, delegate any of its functions to the district council, and if the county council refuse, the Minister of Health may, on appeal, make such directions as he may think proper. [874]

**Registration.**—Applications for registration must be made in writing to the council, accompanied by a fee of 5s. No special form is necessary. The council may refuse registration on the grounds of unfitness of the applicant or any of the staff, or unfitness of the premises and its equipment or other reasons connected with the staffing of the home, or because a nursing home—other than a maternity home—not under the charge of a resident registered medical practitioner, will not be under the charge of a resident qualified nurse who is a person registered in the general part of the register of nurses (c) or who had, before July 1, 1928, completed a three years' course of training in an approved general hospital, or because it will not have a proper proportion of qualified nurses amongst the persons employed at the home. In the case of a maternity home, a possible ground of refusal is that the superintendent of the nursing is neither a qualified nurse nor a certified midwife, or that a person is allowed to attend patients who is not a medical practitioner, certified midwife, pupil midwife or qualified nurse. The certificate of registration must be affixed in a conspicuous place in the home.

The local authority may refuse to register, and may cancel a registration, but before either must give the applicant or the person registered, fourteen days' notice of their intention stating the grounds for their intended action, and if the applicant or the person registered desires to be heard, an opportunity must be given him to show cause, either personally or by a representative, why such action should not be taken. Refusal or cancellation must be by order, and an appeal lies to a court of summary jurisdiction. [875]

**Exemptions.**—The local authority may grant exemptions from the operation of these provisions to hospitals or institutions not carried on for profit. These exemptions operate for one year, but may be renewed yearly thereafter. An appeal lies to the Minister of Health where the local authority refuse to grant an exemption. A Christian Science nursing home may be exempted from the registration provisions by the Minister of Health who can withdraw this exemption if, in his opinion, the home is not carried on in accordance with the principles and practice of Christian Science. Such a home must adopt and use the name of Christian Science house. [876]

**Bye-Laws.**—A local authority may make bye-laws prescribing the records to be kept and the notices to be given. Model bye-laws under the corresponding powers in the repealed Nursing Homes Registration

(b) For these Acts and institutions, see titles MENTAL DEFECTIVES; MENTAL DISORDER AND MENTAL DEFICIENCY; MENTAL HOSPITALS.

(c) S. 2 (2) (a), Nurses Registration Act, 1919; 11 Halsbury's Statutes 748.

Act, 1927 (*d*), have been issued by the Minister of Health, which set out in detail the records required to be kept. These comprise records of admission, discharge and death, the occurrence of infectious disease and, in the case of a maternity home, the date and hour of delivery of the patient, the number and sex of the child or children born and whether the birth was a live birth or still-birth; the name of the person delivering the child; the method of the feeding of the child and the day and hour of any miscarriage occurring, or any other abnormality. Records are also to be kept in a maternity home of the removal of children from the home otherwise than to the custody or care of their parents, and in all nursing homes a case record has to be kept giving a detailed statement of the health of every patient. [877]

**Inspection.**—The M.O.H. or a qualified nurse, or other duly authorised officer of the authority, may enter and inspect at any reasonable time any premises which are being used or suspected to be used for the purpose of a nursing home, and inspect the records kept. A medical record, however, is not open to such inspection. The Minister of Health, in a circular of September, 1936, has stressed the need of more stringent administration and inspection so as to ascertain at an early stage the existence of nursing homes not registered, and he suggests the scrutiny of press advertisements in the area, and greater co-operation with the medical profession as a means of obtaining such information. [878]

**London.**—The Nursing Homes Registration Act, 1927, applied to London, but the Act has, as regards London, been repealed and its provisions incorporated in the P.H. (London) Act, 1936 (*e*).

The L.C.C. and the City corporation respectively are the local supervising authorities (*f*). Power to the L.C.C. to delegate to borough councils is provided by sect. 249. This power has not been exercised. [879]

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(*d*) 17 & 18 Geo. 5, c. 38.

(*e*) See in particular, ss. 240—249 (26 Geo. 5 & 1 Edw. 8, c. 50).

(*f*) *Ibid.*, s. 240.

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## OATHS

See ACCEPTANCE OF OFFICE.

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## OBJECTIONS

See TOWN PLANNING SCHEMES; VALUATION LIST.

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## OBJECTIONS STATED TO MINISTER

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*See also titles :*

APPEALS TO MINISTERS ;  
COMPULSORY PURCHASE OF LAND ;  
INQUIRIES ;

ORDERS ;  
POWERS OF MINISTERS.

**Introductory.**—This article deals with the right of objection by a person who is aggrieved by a proposal of a local authority made in pursuance of a power or duty contained in a statute or statutory order. In several statutes machinery is specifically provided for an appeal to a Minister by a person who is aggrieved by a decision of the local authority, and also for a complaint to a Minister where a local authority have made default in enforcing an enactment which it is their duty to enforce.

For these matters reference may be made to the title **APPEALS TO MINISTERS** in Vol. I. on pp. 300, 301 of which will be found observations as to the nature of the "decision" of a Minister. This decision is a "judicial" one in those cases where no discretion is allowed him, and he is bound to apply the law to the facts presented to him. Where, on the other hand, the Minister has a discretion, the decision is usually termed "quasi-judicial," as being one that contains some, but not all, of the attributes of a judicial decision. The whole question of delegated legislation and quasi-judicial decisions has been exhaustively treated in the Report of the Committee on Ministers' Powers, published in 1932 (a). In the same document will be found some interesting comments on the question of judicial control over delegated legislation. [880]

Power has been conferred upon local authorities by various statutes to formulate various schemes relating to such matters as housing, town and country planning, etc. These are set in motion by the publication of the proposals of the authority, as provided by the relevant

(a) Cmd. 4060.

Act. Notice of the proposals has usually to be published in the local press and sent to all persons who will be affected by them. The Acts then allow those persons who are aggrieved by a proposal to state their objections to the Minister, who may thereupon cause a public local inquiry to be held for the purpose of considering the objections. The conditions under which a decision of the Minister can be invoked by an objector will be described in the present article. The procedure at a local inquiry, the appointment of the person by whom it will be held, and the representation of parties by counsel or otherwise, will be found discussed in the titles *APPEALS TO MINISTERS* and *INQUIRIES*. It is sufficient to point out here, that as far as quasi-judicial decisions of a Minister are concerned, this public inquiry is only the first stage in the matter. It is at the second stage—the exercise of the Minister's discretion—that the matter is finally decided.

There is, in general, no obligation cast upon the Minister to state the grounds of his decision, but the general position has been modified in some instances by recent legislation. Thus, any person who objects to a clearance order or a compulsory purchase order made under Part III. of the Housing Act, 1936, on the ground that a building included therein, being a building in which he is interested, is not unfit for human habitation, and who appears at the public local inquiry in support of his objection is, if the building is included in the order as confirmed, as being unfit for habitation, entitled on making a request in writing, to be furnished by the Minister of Health with a statement in writing of his reasons for deciding that the building is so unfit (*b*). Again, upon an objection to the decision of a highway authority under the Restriction of Ribbon Development Act, 1935, the Minister of Transport in giving his decision is required by sect. 7 (4) of the Act (*c*) to publish a summary of the facts as found by him, and the reasons for his decision (*d*). [881]

**Housing Orders. Compulsory Purchase Orders.**—Before a compulsory purchase order under the Housing Act, 1936 (*e*), is submitted to the Minister of Health for confirmation, the council must under para. 3 of the First Schedule publish in one or more newspapers circulating within their district a notice in the prescribed form, and also serve a notice on every owner, lessee and occupier (tenants for a month or less period excepted) of the land to which the order relates. These notices must contain the particulars required by para. 3, and the notices to owners, etc., must state the effect of the order, and that it is about to be submitted to the Minister for confirmation, and must specify the time and manner in which objections to the order can be made.

By para. 5, if no objection is duly made by any of the persons on whom the notice was served, or if all the objections are withdrawn, the Minister may, if he thinks fit, confirm the order with or without modification: but in any other case (*i.e.* where objections have been made and not withdrawn) he must, before confirming the order, cause a public inquiry to be held and must consider any objections together with the report of the person holding the inquiry. It is then open to

(b) Housing Act, 1936, s. 41 (2); 29 Halsbury's Statutes 599.

(c) 28 Halsbury's Statutes 86.

(d) See *post*, p. 418.

(e) See Housing Act, 1936, ss. 16, 20, 32, 38, 74, and Sched. I.; 29 Halsbury's Statutes 579 *et seq.*



him to confirm the order with or without modification (f). As to giving reasons for his decision, see *ante*, p. 415. [882]

The Minister may require every person who has made an objection to state in writing the grounds of it, and may confirm the order without causing a local inquiry to be held if he is satisfied that any objection duly made relates exclusively to matters which can be dealt with by the arbitrator by whom the compensation is to be assessed (g).

By sect. 41 (1) of the Housing Act, 1936 (h), where a person, upon whom notice of a clearance order or a compulsory purchase order under Part III. of the Act is required to be served, has made objection on the ground that a building included therein is not unfit for human habitation, and the objection has not been withdrawn, the Minister must not cause the public local inquiry to be held earlier than fourteen days after he is satisfied that the local authority have served upon the objector a notice in writing stating what facts the authority allege as the principal grounds for being satisfied that the building is so unfit. [883]

*Clearance Orders (i).*—The requirements in para. 3 of the Third Schedule to the Act of 1936, as to the advertisement of the fact that a clearance order has been made and as to the service on owners of notices, are similar to the requirements respecting compulsory purchase orders, which are set out *ante*, on p. 415. By para. 5, if no objection is made, or any objection made has been withdrawn, the Minister may, if he thinks fit, confirm the order with or without modification, but in any other case he must, before confirming the order, cause a public local inquiry to be held, and consider any objection not withdrawn and the report of the person holding the inquiry (k). As to reasons for the Minister's decision, see *ante*; and as to the local inquiry not being held sooner than fourteen days, see *supra*. [884]

*Compulsory Purchase Orders in Connection with Re-Development Plan (l).*—Before submitting the order to the Minister the council must under paras. 3 and 13 in the First Schedule to the Act of 1936 (m), first publish a notice in the prescribed form in one or more newspapers, then serve a notice on every owner, lessee and occupier of the land (tenants for a month or less period excepted), and on every mortgagee of land comprising or consisting of a house, so far as it is reasonably practicable to ascertain such mortgagees. The notice served must state the time and manner in which objections may be made to the order. If an objection is made on any of the following grounds (i.) that any house indicated in the order as being unfit for human habitation and not capable at reasonable expense of being rendered so fit ought not to have been so indicated; or (ii.) in the case of land in the re-development area, that the objector is prepared to enter into arrangements for the carrying-out of re-development, or for securing the use of the land in accordance with the re-development plan; or (iii.) in the case of land outside the re-development area, with reference to any matter not being a matter which in the opinion of the Minister can be

(f) As to public local inquiries, see ss. 178 and 186 of the Housing Act, 1936 (29 Halsbury's Statutes 677, 679), and s. 290 of the L.G.A., 1933 (20 Halsbury's Statutes 450).

(g) Housing Act, 1936, Sched. I., proviso to para. 4; 20 Halsbury's Statutes 665.

(h) *Ibid.*

(i) See Housing Act, 1936, Part III., Sched. III.; 29 Halsbury's Statutes 584, 638.

(k) *Ibid.*, Sched. III., para. 5.

(l) See Housing Act, 1936, s. 36, Sched. I.; 29 Halsbury's Statutes 593, 684.

(m) 20 Halsbury's Statutes 685, 687.

dealt with by the arbitrator by whom the compensation is to be assessed, the Minister must, unless the objection be withdrawn, cause a public local inquiry to be held and consider any objections not withdrawn and the report of the person holding the inquiry (n). [885]

**Town and Country Planning Act, 1932. *Compulsory Purchase Orders* (o).**—Before submitting the order to the Minister notices must be published and served on owners, etc., as described on p. 415. If no objection is made, or those made are withdrawn, the Minister may confirm the order with or without modification. In any other case he must, before confirming the order, cause a local inquiry to be held. He may also require any person who has made an objection to state the same in writing, and may confirm the order without causing a local inquiry to be held if he is satisfied that every objection made relates exclusively to matters which can be dealt with by the arbitrator by whom compensation is to be assessed (p). [886]

***Other Orders and Schemes.***—By sect. 87 of the Town and Country Planning Act, 1932 (q), the Minister is authorised to make regulations for regulating generally the procedure to be followed in connection with the preparation or adoption of schemes or orders, other than compulsory purchase orders, and for prescribing anything which is by that Act required or authorised to be prescribed. Part I. of the Fourth Schedule to the Act describes in greater detail the matters in relation to which regulations are to be made. Those relating to preliminary statements of proposals for development (para. 2), the preparation or adoption of schemes (para. 3) and the submission of schemes to the Minister and consideration and approval of them by him (para. 4), must cover the procedure with regard to objections to be taken into consideration by the local authority or joint committee (as in the case of preparation or adoption of schemes), or if not met or withdrawn, to be taken into consideration by the Minister, who may hold a local inquiry. [887]

**Restriction of Ribbon Development Act, 1935.**—Under sect. 1 of this Act (r), a highway authority (s) may by resolution adopt, as respects any road, any of the standard widths specified in the First Schedule to the Act, and if the resolution be approved by the Minister of Transport, the provisions of the Second Schedule must be complied with. Before any resolution is submitted for the Minister's approval, the highway authority must cause to be advertised in two or more newspapers circulating in the locality of the road, and to be sent to any person whose name and address are entered in the register kept by the authority (t), a notice, in the form approved by the Minister, of the passing of the resolution; and before approving the resolution the Minister must consider any objections duly made within the time stated in the notice and, unless he considers it unnecessary so to do, must hold a public inquiry. After holding a public inquiry, and if

(n) Housing Act, 1936, Sched. I, para. 5; 29 Halsbury's Statutes 686.

(o) See s. 25, Sched. III, Part I.; 25 Halsbury's Statutes 502, 529.

(p) Sched. III, Part I., para. 5; *ibid.*, 530, 531.

(q) 25 Halsbury's Statutes 509.

(r) 28 Halsbury's Statutes 81.

(s) See title **HIGHWAY AUTHORITIES**. This expression is not defined in the Act of 1935, but see s. 12 as to certain roads maintained by councils of boroughs and urban districts. See the Fourth Schedule to the Trunk Roads Act, 1936 (29 Halsbury's Statutes, 214), for the modification of the meaning of "highway authority" effected by that Act.

(t) As to this register, see Act of 1935, s. 5; 28 Halsbury's Statutes 84.

the Minister is satisfied that the power to adopt a standard width, or to alter a standard width previously adopted, ought to be exercised by the highway authority, he may by notice in writing require the authority to exercise the power, and if they fail to do so, make an order adopting a standard width, or altering a standard width previously adopted (a). By sect. 7 (4) of the Act, if an applicant for a consent under sect. 1 or sect. 2 is aggrieved by a decision of the highway authority withholding their consent or imposing a condition, he may appeal to the Minister of Transport, who after consultation with any other Minister concerned, may make such order as he thinks fit, and his decision is final; but if required either by the highway authority or by the applicant the Minister must order a public local inquiry and in giving his decision upon the appeal must publish a summary of the facts as found by him and the reasons for his decision. The Trunk Roads Act, 1936, modifies these provisions in relation to certain roads. See title TRUNK ROADS. [888]

**Air Navigation Act, 1936.**—Before a compulsory purchase order under this Act is submitted to the Secretary of State for Air for confirmation, notices must be published and served on owners, etc., as described *ante*, on p. 415 (b). The procedure for dealing with objections to orders is similar to that prescribed under the Town and Country Planning Act, 1932, and described *ante*, on p. 417. [889]

**Proposals under L.G.A., 1933.** *Alteration of Boundaries of Counties or Boroughs.*—Where an application is made to the M. of H. by a county council for a provisional order altering the county boundary or by a borough council for a provisional order altering the borough boundary, the Minister, unless for special reasons he thinks that the proposal ought not to be entertained, must cause a local inquiry to be held under sect. 290 of the Act at which objections are to be heard (c). As to objections by interested persons with regard to proposals for the extension of the area of a county borough, see sect. 140 (3) of the Act. [890]

*Alteration of Urban and Rural Districts or Parishes.*—For objections by local government electors by petition to the Minister to disallow or modify an order of the county council for these purposes, see sect. 141 (5) of the Act (d). The Minister must on the receipt of a valid petition cause a local inquiry to be held. [891]

*Second General Review by County Councils.*—Provision is made for representations regarding this matter by local authorities or parish meetings or local government electors, by sect. 146 (4) of the Act (e). [892]

**Compulsory Purchase of Land.**—For the procedure by public inquiry in case of objections to a provisional order, see sect. 160 (5) of the Act (f). As to the purchase of land by means of an order confirmed

(a) Restriction of Ribbon Development Act, 1935, s. 1 (4). As to advertisement and notice of the resolution, see Sched. II. to the Act; 28 Halsbury's Statutes 100.

(b) Air Navigation Act, 1936, s. 9, Sched. I., Part I.; 20 Halsbury's Statutes 824, 840. S. 9 (2) says of the First Schedule " (being provisions which, subject to certain adaptations, modifications and exceptions, correspond with the provisions of the Town and Country Planning Act, 1932, referred to in the margin of the said Schedule) ".

(c) L.G.A., 1933, s. 140 (1); 26 Halsbury's Statutes 370.

(d) 26 Halsbury's Statutes 861.

(e) L.G.A., 1933; 26 Halsbury's Statutes 865.

(f) 26 Halsbury's Statutes 393.

by the Minister, see sect. 161 of the Act. For objections to a compulsory purchase of land by a county council on behalf of a parish council, see sect. 168 (8) of the Act (*g*). [893]

**Commons.**—Provisions for making schemes for the regulation and management of commons are contained in Part I of the Commons Act, 1890 (*h*), and instructions have been issued by the Minister of Agriculture and Fisheries with regard to the same (*i*). By para. 4 of these instructions a period of three months is allowed for objections to be made in writing to the Minister.

By sect. 194 of the Law of Property Act, 1925 (*k*), the erection of a building or fence or the construction of any other work preventing or impeding access to a common is unlawful unless the consent of the M. of A. & F. is obtained. Before giving such consent the Minister must hold the same inquiries as directed by the Commons Act, 1876 (*l*). Sect. 12 of that Act provides for the rules to be observed in respect of provisional orders made by the Minister and sub-sect. (7) of the section deals with the meetings to be held in order to ascertain the interests of dissenting parties.

Before the M. of A. & F. gives a "certificate of equality of exchange" in the case of the proposed inclosure of part of a common under sect. 19 of the Development and Road Improvement Funds Act, 1909 (*m*), he must give public notice of the proposed exchange and afford opportunities to all persons interested to make representations and objections thereto, and must, if necessary, hold a local inquiry.

Where a compulsory purchase order under Part VII of the L.G.A., 1933, authorises the acquisition of any land forming part of a common, etc., and the order provides for an exchange of lands certified by the M. of A. after consultation with the M. of A. & F. to be equally advantageous to those persons entitled to commonable or other rights, the M. of H. must, if necessary, hold a local inquiry at which objections can be heard (*n*). [894]

**Small Holdings, etc., Compulsory Purchase or Hiring.**—By para. 2 (3) of the Small Holdings and Allotments (Compulsory Purchase) Regulations, 1936 (*o*), when a council propose to purchase land compulsorily under an order which requires the Minister's confirmation under the Small Holdings and Allotments Act, 1908 to 1931 (*p*), the requisite notices must state, *inter alia*, that any objection to the council's proposal must be presented to the Minister, and every notice sent to an owner, lessee or occupier must state the period within which an objection by him may be presented in accordance with the regulations. The notice may also state that a copy of every objection should be sent to the clerk of the council. If the council are a county council acting on behalf of a parish council or a parish meeting, the notice must so state and give the name of the parish (reg. 2 (4)). One month from and after the date on which the notice is sent to him is allowed within which the

(*g*) 26 Halsbury's Statutes 308.

(*h*) 2 Halsbury's Statutes 607.

(*i*) These are printed in the 10th edition of Lumley's Public Health, Vol. III., p. 3120.

(*k*) 15 Halsbury's Statutes 373.

(*l*) See ss. 10 (6), 11 of the Act of 1876; 2 Halsbury's Statutes 587.

(*m*) 9 Halsbury's Statutes 216.

(*n*) L.G.A., 1933, s. 174 (2) (*a*); 26 Halsbury's Statutes 402.

(*o*) S.R. & O., 1936, No. 195.

(*p*) *Ibid.*, para. 3 (1).

objection to the compulsory order must be presented to the Minister by the person interested in the land to which the order relates (reg. 4).

As to objections to orders for compulsory hiring, see the Small Holdings and Allotments (Compulsory Hiring) Regulations, 1936 (g). [895]

**Sunday Entertainments Act, 1932.**—The procedure with regard to objections to a draft order relating to Sunday cinematograph entertainments in the case of boroughs, urban and rural districts, and the calling of public meetings and holding of public inquiries (in the case of rural districts), will be found in the Schedule to the Act (r). The Borough Funds Act, 1903, referred to in the Schedule, is repealed and replaced by sect. 255 and the Ninth Schedule to L.G.A., 1933 (s). [896]

**London.**—Some of the enactments already mentioned are not appropriate to London, but where they are acted upon in London, the position resembles that outside London. [897]

(g) S.R. & O., 1936, No. 100.

(r) 25 Halsbury's Statutes 926. See also the circular as to procedure of October 14, 1932 (No. 654, 202/1), and the Sunday Cinematograph Entertainments (Polls) Order, 1932; S.R. & O., 1932, No. 828.

(s) 26 Halsbury's Statutes 444, 510.

## OBSTACLES ON HIGHWAYS

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### See also titles :

HIGHWAY AUTHORITIES ;  
HIGHWAY NUISANCES ;  
LEVEL CROSSINGS ;  
MARKETS AND FAIRS ;  
PLANTING OF TREES ;  
POSTMASTER-GENERAL ;

PROJECTIONS OVER HIGHWAYS ;  
ROAD TRAFFIC ;  
SEATS ;  
STREET TRADING ;  
UNREASONABLE AND EXCESSIVE USER OF  
HIGHWAYS.

**Introductory.**—It is an unlawful act and a nuisance at common law to erect without lawful authority a permanent obstruction on a highway, which renders it less commodious to the public. This principle applies not only to that part of the highway used as a public right of passage, but to the whole space, where a highway is fenced or

defined (a). It is no defence that sufficient space is left for public traffic and that the obstruction is on a part of the highway not usually used for traffic (*ibid.*), or that the obstruction is for the benefit of the public (b). Whether an obstruction on a highway is a nuisance is a question of fact.

It is provided by the Road Traffic Act, 1930 (c), that any person in control or possession of a structure (d) erected on a highway otherwise than under statutory powers, may be required by written notice from the highway authority to remove the same within the time stated in the notice. The notice may be sent personally, or by post (e). For "highway authorities," see title HIGHWAY AUTHORITIES (f). [898]

**Seats.**—By sect. 14 of the P.H.A., 1925 (g), a local authority, and any person with their consent and subject to such conditions as they may impose, may, in a proper and convenient situation in any street or public place erect and maintain seats for public use, which must be free. No restriction as to public right of passage, or as to the convenience of adjoining owners or occupiers is imposed (as in the case of street bins by sect. 13 (2)). It has been suggested that in this matter a local authority should act reasonably, and the H.O. have recommended that the chief officer of police in the district should be consulted. Powers are sometimes conferred by local Acts upon a county council and persons with their consent, to provide seats in proper and convenient situations in a county road (h). [899]

**Gates.**—It is an unlawful act to erect a gate upon a highway (if none has existed before), whether locked and fastened or capable of being opened or shut at the will of a passer-by, "for women and old men are more troubled with opening gates than they should be if there were none" (i). But a highway is sometimes dedicated subject to permanent obstructions (k). It has been held that it is an obstruction if a person locks a gate across a highway, and that it is no answer to say that the keys of the gate will be supplied on request (l). As to the requirement that gates or doors adjoining a highway should open inwards, see Towns Improvement Clauses Act, 1847 (m). See also title LEVEL CROSSINGS. [900]

**Street Bins.**—These may be provided under sect. 13 (1) of the P.H.A., 1925 (n), by a local authority, where Part II. of that Act has been adopted, for the collection and temporary deposit of street litter and refuse. The local authority, however, in providing the same, must not hinder the reasonable use of the street by the public. The same

(a) *R. v. United Kingdom Electric Telegraph Co.* (1862), 31 L. J. (M. C.) 166; 26 Digest 318, 452.

(b) *R. v. Ward* (1836), 4 Ad. & El. 384; 30 Digest 241, 797.

(c) Road Traffic Act, 1930, s. 56 (1); 23 Halsbury's Statutes 652.

(d) For definition of structure, see Road Traffic Act, 1930, s. 56 (5); *ibid.*

(e) *Id.*, s. 56 (4).

(f) Vol. VI., p. 343; and for nuisances generally, see title HIGHWAY NUISANCES; and 13 Halsbury's Statutes 601.

(g) 13 Halsbury's Statutes 1119.

(h) *E.g.* the Hertfordshire County Council Act, 1935, s. 31.

(i) *James v. Haywood* (1630), Cro. Car. 184; 26 Digest 419, 1381.

(k) See *Robbins v. Jones* (1863), 15 C. B. N. S. 221; 26 Digest 442, 1590.

(l) *Guest's Estates, Ltd. v. Milner's Safes, Ltd.* (1911), 28 T. L. R. 59; 26 Digest 419, 1352.

(m) S. 71; 13 Halsbury's Statutes 553.

(n) 13 Halsbury's Statutes 1119.

section permits similar receptacles to be erected for the storage of sand, gravel, cinders, etc. County councils are sometimes authorised under local Acts to provide bins for litter (*o*). [901]

Drinking Fountains may be provided by an urban or R.D.C. under sect. 14 of the P.H.A., 1925 (*p*) (where Part II. has been adopted). As to whether a public fountain, not being a drinking fountain, can be lawfully erected in a highway, see *Hildreth v. Adamson* (*q*). [902]

Stalls, Benches, etc.—The placing of goods on a highway for sale or otherwise is no offence if placed upon a strip of land on which there is a right to place them (*r*), but placing goods on the highway confers no right to do so even after so long a period as thirty years (*s*). Costermongers have no right to cause any real and substantial obstruction to a highway (*t*), so that an obstruction caused in a highway by an itinerant vendor selling from a cart or barrow, or the taking up of pitches by newspaper sellers, are matters of tolerance. As to the powers of local authorities to control street trading, see titles STREET TRADING and MARKETS AND FAIRS.

As to what is a costermonger's vehicle, see *Baker v. Bradley* (*u*). There is an absolute prohibition against the pitching of any tent, booth, stall, stand or encampment by a hawker, higgler, gipsy or other person travelling, under sect. 72 of the Highway Act, 1885 (*a*).

It was held in the Divisional Court, in a case of obstruction by a stall holder whose stall projected some 16 inches from the shop front, that the fact that other stalls in the same street projected as much, if not more, was, under sect. 1 of the Probation of Offenders Act, 1907, an extenuating circumstance (*b*). [903]

Posts.—District councils, as surveyors of highways, are empowered to erect direction-posts on highways by sect. 144 of the P.H.A., 1875 (*c*). It is an indictable offence to erect posts across a highway so as to obstruct passage along the same. The erection of telegraph posts on a highway as a permanent erection, without statutory authority, so as to obstruct the passage of horses and carriages, is an indictable nuisance and it is no defence that the posts are not on the metalled part of the highway, nor on a footpath formed on it, nor that sufficient space is left for public traffic (*d*). As to powers of local authorities to erect gas-lamp posts, see sect. 45 of the Lighting and Watching Act, 1833 (*e*), in rural parishes where the district councils have not obtained urban powers of lighting; and sects. 161, 162 of the P.H.A., 1875 (*f*), in urban districts and rural districts under urban powers. See also

(*o*) *E.g.* The Essex County Council Act, 1833, s. 153.

(*p*) 15 Halsbury's Statutes 1119.

(*q*) (1860), 8 C. B. N. S. 587; 43 Digest 1082, 163.

(*r*) *Hitchman v. Watt* (1894), 58 J. P. 720; 26 Digest 444, 1601.

(*s*) *Cl. Whittaker v. Rhodes* (1881), 46 J. P. 182; 26 Digest 443, 1598; *Spice v. Peacock* (1875), 80 J. P. 581; 26 Digest 443, 1597.

(*t*) *R. v. Francis, Ex parte Wallon* (1890), 63 J. P. 460; 26 Digest 424, 1434.

(*u*) (1910), 108 L. T. 253; 74 J. P. 341; 26 Digest 423, 1428.

(*a*) 9 Halsbury's Statutes 88.

(*b*) *Dunning v. Trainer* (1909), 101 L. T. 421; 26 Digest 458, 1750.

(*c*) 13 Halsbury's Statutes 638.

(*d*) *R. v. United Kingdom Electric Telegraph Co.* (1862), 81 L. J. (M. C.) 106; 26 Digest 318, 452.

(*e*) 8 Halsbury's Statutes 1201.

(*f*) 13 Halsbury's Statutes 692, 693.

sect. 6 of the Gasworks Clauses Act, 1847 (g). As to electric light standards, see the Electric Lighting (Clauses) Act, 1899 (h). Power to erect street-boxes in connection with the supply of electric current is provided by sect. 13 of the above-mentioned Act. [904]

**Traffic Signs and Street Crossing "Beacons," etc.**—By sect. 48 of the Road Traffic Act, 1930 (i), highway authorities, under the direction of the M. of T., may cause or permit signs to be placed in or near any road in their area. See the various orders and directions issued under the Road Traffic Acts by the M. of T. [905]

**Post-Office Pillar Boxes.**—The Postmaster-General has powers to erect pillar boxes under sect. 34 of the Post Office Act, 1908, as he thinks expedient (k). Further as to this matter, see title **POSTMASTER-GENERAL**. [906]

**Trees.**—Sect. 1 of the Roads Improvement Act, 1925 (l), empowers the Minister of Transport and any highway authority to plant trees and shrubs, or lay out grass margins, in any highway maintainable by him or them respectively, and erect and maintain fences for protecting the trees, shrubs or grass. By sect. 43 of the P.H.A. Amendment Act, 1890 (m), urban authorities who have adopted Part III. of that Act may, in their discretion, plant trees in highways repairable by the inhabitants at large. Rural authorities do not possess like authority unless in pursuance of urban powers, etc., under sect. 276 of the P.H.A., 1875, but this is now one of the purposes for which, by a general order of the Minister, rural authorities have been given urban powers under the R.D.C. (Urban Powers) Order, 1931 (n). The powers of any of the Acts mentioned are not to be exercised, nor must trees be planted so as to hinder the reasonable use by the public of the highway, or so as to cause a nuisance. As to lopping of trees, and the power of the surveyor with regard thereto, see sect. 65 of the Highway Act, 1885 (o), and sect. 23 of the P.H.A., 1925 (p). Mere neglect to lop trees overhanging a highway, where damage is done to a person driving, will not render the local authority liable to an action for damages (q). [907]

**Sand Bins.**—See **Street bins**, *ante*.

**Milestones.**—See sect. 24 of the Highway Act, 1835 (r), which applies to surveyors of any parish the whole or part of which is within three miles of the G.P.O. in the City of London. [908]

**Fire Alarms.**—Where sect. 15 of the P.H.A., 1925 (s), has been adopted, local authorities may place fire alarms in streets or public places in such positions as they think proper after consultation with the police authority for the police district in which they are to be erected or fixed. The exercise of this discretion must be reasonable. [909]

**Statues and Monuments.**—Power is given by sect. 42 of the P.H.A. Amendment Act, 1890 (t) (where adopted) for an urban authority

(g) 8 Halsbury's Statutes 1217. See also title **GAS**.

(h) 7 Halsbury's Statutes 705 *et seq.*

(i) 13 Halsbury's Statutes 51.

(m) 13 Halsbury's Statutes 840.

(n) 9 Halsbury's Statutes 81.

(o) *Tregellas v. L.C.C.* (1897), 14 T. L. R. 55; 26 Digest 403, 1264. See also titles **HIGHWAY NUISANCES AND MISFEASANCE AND NON-FEASANCE**.

(p) 9 Halsbury's Statutes 61.

(q) 13 Halsbury's Statutes 1119.

(j) 23 Halsbury's Statutes 646.

(k) 9 Halsbury's Statutes 219.

(l) 24 Halsbury's Statutes 262.

(p) 13 Halsbury's Statutes 1123.

(t) *Ibid.*, 840.



to authorise the erection of these in any street or public place within their district. As to rural authorities taking urban powers for this purpose, see "Trees," *ante*. [910]

**Cabmen's Shelters.**—Urban authorities possess power to erect these under sect. 40 of the P.H.A. Amendment Act, 1890 (*u*). Rural authorities must first take urban powers—as to which see sect. 276 of the P.H.A., 1875, and the Order and Schedule referred to in "Trees," *ante*. [911]

**Sanitary Conveniences.**—For the powers of urban authorities in this connection, see sect. 39 of the P.H.A., 1875, and sect. 20 of the P.H.A. Amendment Act, 1890 (*a*), where adopted. Under the first-mentioned section a urinal may be erected in a highway (*b*). In such a case it is not necessary to proceed under sect. 84 *et seq.* of the Highway Act, 1835, for the powers of the authority include that of depriving the public of their right to traverse the highway to the extent of the encroachment. See also sect. 47 of the P.H.A. Amendment Act, 1907, where in force. Rural authorities may obtain power to erect sanitary conveniences by obtaining urban powers; see methods mentioned in "Trees," *ante*. [912]

**Barbed Wire.**—See title BARBED WIRE.

**Awnings in Streets.**—See sect. 28 of the Town Police Clauses Act, 1847 (*c*), and title HIGHWAY NUISANCES.

**Street Refuges, Omnibus Barriers, etc.**—See sect. 39 of the P.H.A. Amendment Act, 1890 (*d*). Sect. 55 of the Road Traffic Act, 1930 (*e*), gives certain powers to councils of urban districts to erect places of refuge and subways. Rural authorities may obtain urban powers in this behalf in the manner mentioned under "Trees," *ante*. [913]

**Parking-Places.**—Where for the purpose of relieving or preventing congestion of traffic, it appears to the local authority to be necessary to provide suitable parking-places for vehicles, the local authority may provide the same in accordance with sect. 68 of the P.H.A., 1925 (*f*). If a parking-place is in a street, for upkeep of which some other authority is responsible, the latter's consent must be obtained. The section also requires public notices to be given, and allows an appeal to a petty sessional court by any person aggrieved by the proposal. No charge can be made by the local authority for parking (or taking care of vehicles at a parking-place) in a street (*g*). As to stations for public service vehicles, see sect. 90 of the Road Traffic Act, 1930 (*h*). Sect. 68 of the P.H.A., 1925, is now extended to give power to provide and maintain buildings for use as parking-places, and provide and maintain cloakrooms in connection with parking-places. The word "parking-place" in sect. 68 of the 1925 Act is to be construed as including such cloakrooms and other conveniences (*i*). [914]

(*u*) 13 Halsbury's Statutes 839.

(*a*) *Ibid.*, 642, 831.

(*b*) See judgment of LUSH, J., in *Vernon v. St. James, Westminster, Vestry* (1880), 50 L. J. (Ch.) 81; 26 Digest 310, 427.

(*c*) 19 Halsbury's Statutes 39.

(*d*) 18 Halsbury's Statutes 839.

(*e*) 28 Halsbury's Statutes 652.

(*f*) 18 Halsbury's Statutes 1145.

(*g*) See s. 68 (*6*) of the Act of 1925, and the prefatory memorandum to the model bye-laws issued from the M. of H. for use under that section.

(*h*) 23 Halsbury's Statutes 670.

(*i*) See *Restriction of Ribbon Development Act*, 1935; 28 Halsbury's Statutes 79.

**Stiles, Fences, etc.**—Fence includes any hoarding or paling (*k*). The fencing of excavations in streets by barriers, as well as the deposit of builders' materials on the same, is provided for by sect. 29 of the P.H.A. Amendment Act, 1907 (*l*), which section, when applied to a district, supplements sect. 81 of the Towns Improvement Clauses Act, 1847. Consent is required from the local authority in writing, and is dependent upon the provision of proper fencing and lighting (see HIGHWAY NUISANCES).

If there be a public footway with a stile across it of a certain height, no one has a right to remove the stile and put up a gate of greater height; and the fact that gates had been previously placed across other parts of the way will be no defence (*m*). For fences or similar protection to trees and grass margins, see under heading "Trees," *ante*. [915]

**Street Lamps.**—Under sect. 161 of the P.H.A., 1875 (*n*), urban authorities can contract for supply of gas, or other means of lighting streets, markets, and public buildings, and may supply lamps, lamp-posts, etc. The authority have a discretion as to the site for the same, even though complaint may be made of obstruction to access of adjoining owners to their premises (*o*).

Orders of the M. of H. under sect. 276 of P.H.A., 1875, have been made empowering rural authorities to undertake the lighting of streets and public places in rural parishes (*p*); in the absence of such an order a parish council has under the Lighting and Watching Act, 1833, power for lighting rural parishes, including the placing of lamp-posts on a highway.

Under sect. 150 of P.H.A., 1875 (*g*), or the Private Street Works Act, 1892 (whichever is in force) (*r*), urban authorities can require proper means for the lighting of private streets. The former section cannot, since the enactment of sect. 30 (3) of the L.G.A., 1929, be put in force in any part of a rural district; in every such district the county council has the powers of the Act of 1892 (*s*). [916]

**London.**—The general principles relating to the subject do not differ in London, but special legislation, notably the Metropolitan Police Acts, 1829–35, has added further prohibitions to those existing elsewhere. The relevant provisions of the Highways Acts apply, the powers therein being exercised by the City corporation and the metropolitan borough councils. Sect. 56 of the Road Traffic Act, 1930 (*t*), applies. For provisions requiring removal of rubbish and obstructions occasioned in streets by the repair of pipes, etc., and imposing penalties on failure to remove after notice, see sect. 18 of the Metropolitan Paving Act, 1817 (*u*). For powers to borough councils to erect posts, fences and rails at the side of or in carriageways, see

(*k*) 9 Halsbury's Statutes 228.

(*l*) 13 Halsbury's Statutes 922.

(*m*) *Bateman v. Burge* (1834), 6 C. & P. 391; 26 Digest 452, 1678.

(*n*) 13 Halsbury's Statutes 692.

(*o*) See *Chaplin v. Westminster Corpn.*, [1901] 3 Ch. 329; 65 J. P. 661.

(*p*) See note to s. 161 of P.H.A. in 10th ed. Lumley's Public Health, I.

(*q*) 13 Halsbury's Statutes 680.

(*r*) 9 Halsbury's Statutes 193.

(*s*) See s. 30 (2), (3), and the First Schedule, L.G.A., 1929; 10 Halsbury's Statutes 904, 975.

(*t*) 23 Halsbury's Statutes 652.

(*u*) 11 Halsbury's Statutes 840.

sect. 108 of the Metropolis Management Act, 1855 (*a*). Sect. 11 of the L.G.A., 1888 (*b*) (powers to county council as to, *inter alia*, removal of obstructions) still applies. Powers under private Acts have from time to time been obtained by the L.C.C. for the removal of gates, bars, etc., in various London streets. (See London Streets (Removal of Gates) Act, 1890, London Streets (Removal of Gates, Bars, etc.) Act, 1893, L.C.C. (General Powers) Act, 1898, Part IV., and L.C.C. (General Powers) Act, 1901, sect. 45.) On the other hand, powers have from time to time been obtained by the L.C.C., and are now vested in the London Passenger Transport Board, for erecting and maintaining shelters and railings at tramway stopping-places.

Sect. 221 of the London Building Act, 1930 (*c*), prohibits the erection of posts and other obstructions or encroachments on streets, or interference with streets so as to impede traffic. On failure to remove after notice the local authority (*i.e.* borough council) may remove and recover expenses summarily. This section does not apply to the City. As to penalties, see sect. 221 (1).

As to mitigation of obstruction of traffic by breaking up of streets, see sect. 5 of the London Traffic Act, 1924 (*d*). [917]

Sect. 39 of the L.C.C. (General Powers) Act, 1928 (*e*), gives power to borough councils to deal with trees, etc., overhanging streets where the light from street lamps is obscured, or the passage of vehicles or foot passengers is endangered or obstructed, or the view of drivers of vehicles is obstructed. On failure by the owner to lop or cut the tree, etc., after notice, the borough council may carry out the requisition of their notice and recover expenses. Appeal is allowed to a metropolitan police magistrate against the requirements of the notice. Sect. 33 of the London Hackney Carriages Act, 1843 (*f*), imposes a penalty on drivers of hackney carriages for (*inter alia*) causing obstruction by loitering or by wilful misbehaviour in any public street, road or place. As to loitering, see also regulations made by Minister of Transport under sect. 10 of the London Traffic Act, 1924. For provisions to prevent obstruction by hackney carriages opposite the G.P.O. in London, see sect. 68 of the Post Office Act, 1908 (*g*).

As to obstruction of carriage and footways by stalls, baskets, wares, etc., under the Metropolitan Paving Act, 1817, the Metropolitan Police Acts, above mentioned, and the Metropolitan Streets Acts, 1867 and 1885, see the title HIGHWAY NUISANCES. See also sects. 30—50 of the L.C.C. (General Powers) Act, 1927 (*h*), as to street trading. [918]

(*a*) 11 Halsbury's Statutes 911.

(*c*) 23 Halsbury's Statutes 819.

(*e*) 11 Halsbury's Statutes 1414.

(*g*) 13 Halsbury's Statutes 66.

(*h*) 11 Halsbury's Statutes 1386—92.

(*b*) 10 Halsbury's Statutes 693.

(*d*) 19 Halsbury's Statutes 177.

(*f*) 19 Halsbury's Statutes 135.

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## OBSTRUCTIVE BUILDINGS

*See* SLUM CLEARANCE.

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## OCCUPATION

See ASSESSMENT FOR RATES.

## OCCUPIER

See ASSESSMENT FOR RATES.

## OFFENCES AS TO HIGHWAYS

See REPAIR OF ROADS.

## OFFENSIVE BEHAVIOUR

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See also titles : GOOD RULE AND GOVERNMENT ;  
HIGHWAY NUISANCES.

**Introductory.**—There is no standard definition of some of the terms used in this article. An attempt to define "obscenity" was made in *R. v. Hicklin* (a), viz. : "A publication is said to be obscene when its tendency is to deprave and corrupt those whose minds are open to such immoral influences, and into whose hands it is likely to fall." As to "profanity," "profaneness, in the Sunday Observance Act, 1780 (b), is used in the classical sense of non-religious," is an observation made by DENMAN, Q.C., as counsel in *Baxter v. Langley* (c). The word has, however, evidently a more popular meaning in some contexts. On comparing the different statutory provisions, it is also clear that such words as "indecent" and "obscene" are used loosely and with some overlapping.

(a) (1868), L. R. 3 Q. B. 860 ; 15 Digest 748, 8070.

(b) 4 Halsbury's Statutes 379.

(c) (1898), L. R. 4 C. P. 21 ; 15 Digest 759, 8173.

The word "indecently" has no definite legal meaning, *per* POLLOCK, C.B., in *R. v. Webb* (d).

It should be noted that many of the offences mentioned below are common law misdemeanors, punishable on indictment; some, where a statutory offence has been created, are usually regarded as police matters rather than as concerning local authorities. Those in which local authorities are concerned are specifically indicated. It should also be noted that the sections frequently cited in this article from the Town Police Clauses Act, 1847, were designed by Parliament for incorporation in special Acts, and by sect. 171 of the P.H.A., 1875 (e), were incorporated as regards all boroughs (outside London) and urban districts, but are not in force in rural districts unless put in force by order of the Local Government Board or Minister of Health under sect. 276 of the last-mentioned Act. Again, sect. 81 of the P.H.A. Amendment Act, 1907 (f), cited in several places in this title as extending the operation of other enactments, is not in force in any borough, urban or rural district, unless put in force by order of the Local Government Board or Minister of Health. [919]

**Disorderly Behaviour.**—Generally, as to bye-laws for the good rule and government of the whole or any part of a county or borough, see Part XII. of the L.G.A., 1933 (g), and title GOOD RULE AND GOVERNMENT.

Disorderly behaviour in a street occasioned by the discharge of fireworks and the making of bonfires is an offence under sect. 28 of the Town Police Clauses Act, 1847 (h). By sect. 81 of the P.H.A. Amendment Act, 1907, any place of public resort or recreation ground belonging to or under the control of a local authority, and any unfenced ground adjoining or abutting upon any street in an urban district is to be deemed a "street" for this purpose. As to nuisances at common law, and miscellaneous offences created by statute or by bye-law, the cases cited in 26 Digest 413, and 38 Digest 106, may be consulted. Disorderly behaviour in a public library or reading room is an offence against the Libraries Offences Act, 1898, subject to punishment on summary conviction by a fine not exceeding 40s. (i). [920]

Persons guilty of riotous, violent or indecent behaviour in a churchyard or burial ground are liable on summary conviction to a fine of £5 or imprisonment for two months (k). Violent or indecent behaviour which prevents or interrupts or delays the decent and solemn burial of a body is an offence punishable by a fine of £5 under the model bye-laws relating to cemeteries issued from the M. of H. (see title CEMETERIES) for adoption by local authorities under the P.H. (Interments) Act, 1879 (l). Note that these bye-laws cannot be put in force in a burial ground provided by a local authority under the Burial Acts, which do not contain any bye-law making power. The word

(d) (1848), 2 Car. & Kir. 933; 15 Digest 746, 8044.

(e) 13 Halsbury's Statutes 606.

(f) *Ibid.*, 940.

(g) 26 Halsbury's Statutes 439.

(h) 19 Halsbury's Statutes 38; see "Introductory," *ante*.

(i) Libraries Offences Act, 1898; 13 Halsbury's Statutes 878.

(k) Ecclesiastical Courts Jurisdiction Act, 1860, s. 2; 6 Halsbury's Statutes 197. It appears that burial ground in this section connotes a burial ground belonging to some religious body, not a burial ground provided under the Burial Acts by a burial board or local authority.

(l) 13 Halsbury's Statutes 706.

"indecent" has evidently a wider meaning in this context than in later parts of this title.

Bye-laws against disorder and annoyance on lands belonging to the National Trust were made under the powers of the National Trust Act, 1907, in 1927, and confirmed in 1928. [921]

**Drunkness.**—A person drunk in a street (*m*) and guilty of riotous or indecent behaviour is liable to a penalty not exceeding 40s. or seven days for every such offence (*n*). Drunkenness on highways or other public places (including a similar offence while in charge of any carriage, horse, cattle or steam engine) or on licensed premises is subject to a penalty under sect. 12 of the Licensing Act, 1872 (*o*). The punishment of persons driving motor vehicles while under the influence of drink is provided for by sect. 15 of the Road Traffic Act, 1930 (*p*). Penalties for permitting drunkenness on licensed premises are imposed by sect. 75 of the Licensing (Consolidation) Act, 1910 (*q*). [922]

**Indecent Advertisements.**—The Indecent Advertisements Act, 1889 (*r*), provides that summary proceedings can be taken against persons affixing to, or inscribing on any house, building, wall, hoarding, fence, gate, pillar or anything whatsoever, so as to be visible to a person being in or passing along any street, public highway or footpath, affixing to or inscribing in any public urinal, delivering or attempting to deliver to anyone passing along a street, etc., or throwing down the area of a house or exhibiting in the window of a shop any picture or printed or written matter of an indecent or obscene nature. The penalty, on summary conviction, is a fine not exceeding 40s. or one month's imprisonment with or without hard labour (*s*). [923]

**Indecent Exposure.**—By s. 4 of the Vagrancy Act, 1824 (*t*), any person wilfully, openly, lewdly and obscenely exposing his person with intent to insult any female, can be deemed a rogue and vagabond, and may be imprisoned for three months with hard labour. This section deals also with endeavouring by the exposure of wounds or deformities to obtain or gather alms. (As to evidence of exposing the person and as to what constitutes an indictable offence, see cases cited in 15 Digest 745-747.) Indecent exposure in a "street" (*u*) is also an offence under sect. 28 of the Town Police Clauses Act, 1847 (*v*), punishable by a fine of 40s., or fourteen days' imprisonment. Sect. 10 of the Baths and Washhouses Act, 1878 (*a*), enacts that baths, washhouses or open or covered bathing places provided under the Baths and Washhouses Acts are to be taken to be public and open places, so as to make offences against decency therein criminal offences. Since by sect. 1 of the Interpretation Act, 1889 (*b*), words importing the masculine gender

(*m*) See "Introductory," *ante*, as to s. 81 of P.H.A. Amendment Act, 1907; 13 Halsbury's Statutes 941.

(*n*) Town Police Clauses Act, 1847, s. 29; 19 Halsbury's Statutes 43 (see "Introductory," *ante*).

(*o*) See also s. 40 of the Criminal Justice Act, 1925; 11 Halsbury's Statutes 419.

(*p*) 23 Halsbury's Statutes 622.

(*q*) 9 Halsbury's Statutes 1027.

(*r*) 4 Halsbury's Statutes 717.

(*s*) See also the Town Police Clauses Act, 1847, s. 28, *supra*.

(*t*) 12 Halsbury's Statutes 915.

(*u*) As extended by s. 91 of the P.H.A. Amendment Act, 1907, *supra*.

(*v*) 19 Halsbury's Statutes 39.

(*a*) 13 Halsbury's Statutes 794.

(*b*) 18 Halsbury's Statutes 992.

include females unless the context otherwise requires, it seems that, while the offence under this heading created by sect. 4 of the Vagrancy Act, 1824 (the essence of which is intent to insult a female) can be committed only by a male, the other statutes under this heading apply to indecent exposure by females also. [924]

**Indecent, Obscene, Violent or Abusive Language.**—Under sect. 28 of the Town Police Clauses Act, 1847 (c), it is an offence to sing any profane or obscene song or ballad or use any profane or obscene language in a street, or in any place of public resort, recreation ground, or unfenced ground, or unfenced ground adjoining or abutting on a street. It is evident that the word "profane" here has not the narrow meaning attributed to it in *Baxter v. Langley* (*supra*, see "Introductory"). It is to be noted that in the immediately preceding enactment in the same section the words (relating to books, prints, etc.) are "profane, indecent or obscene," thus suggesting that indecency can exist without obscenity. It is a moot point whether spoken language can be "indecent," without being "obscene." If so, it is not an offence under this section.

Violent, abusive, or obscene language in a public library or reading room (and also in museums, art galleries and schools provided under the Public Libraries Act, 1892) is an offence liable to a penalty of 40s. on summary conviction, by the Libraries Offences Act, 1898 (d). In *Brabham v. Wookey* (e), a local Act had made the use of indecent language, to the annoyance of inhabitants or passers-by, an offence. A conviction was upheld for using such language inside a house, although it was not heard by any passers-by except police constables. [925]

**Indecent Prints.**—It is an offence for any person in any street (in the extended meaning of the phrase already given) (f), publicly to offer for sale or distribution, or exhibit to public view, any profane, indecent or obscene book, paper, print, drawing, painting or representation. The penalty is 40s. or fourteen days (g). As to the meaning of "obscene," see *R. v. Hickin* (h) and *Steele v. Brannan* (i), both cases decided under the Obscene Publications Act, 1857 (k), under which enactment justices may order a search of premises of suspected persons, etc. As to the meaning of "indecent" and "profane," see "Indecent Language," *supra*. The exposure of obscene prints, pictures or other exhibitions in shop windows in any street, road, highway or public place is also an offence under sect. 2 of the Vagrancy Act, 1838 (l). By sect. 16 of the Post Office Act, 1903 (m), post office regulations may be made for preventing the sending or delivering of indecent or obscene matter and articles, while sect. 63 of the same Act (n) contains a prohibition against the sending or attempt to send by post similar

(c) 19 Halsbury's Statutes 39.

(d) S. 2; 13 Halsbury's Statutes 378.

(e) (1901), 13 T. L. R. 99; 15 Digest 751, 8100.

(f) S. 81 of P.H.A. Amendment Act, 1907, *supra*.

(g) S. 28 of Town Police Clauses Act, 1847; 19 Halsbury's Statutes 38, where in force, *vide supra*.

(h) (1868), L. R. 3 Q. B. 300; 15 Digest 748, 8070.

(i) (1872), L. R. 7 C. P. 261; 15 Digest 750, 8034. See also Colonial and Indian cases upon similar statutes, there cited in a footnote.

(k) 4 Halsbury's Statutes 535.

(l) 12 Halsbury's Statutes 925.

(m) 13 Halsbury's Statutes 44.

(n) *Ibid.*, 83.

matter, or even a packet bearing upon it words or marks of an indecent, obscene or grossly offensive character. The offence is a misdemeanor, punishable on summary conviction by a fine not exceeding £10, and on conviction on indictment to imprisonment not exceeding twelve months with or without hard labour (o). [926]

**Offensive Exhibitions.**—By sect. 14 of the Theatres Act, 1843 (p), the Lord Chamberlain for the time being may forbid the performance of any play, or part thereof, anywhere in Great Britain, which offends against good manners, decorum or the public peace. The penalty is a fine not exceeding £50, and, if the performance took place in a theatre, the justices convicting for the offence may also order that the licence of the theatre shall be void or shall be suspended (q). Sect. 28 of the Town Police Clauses Act, 1847 (r), already mentioned, deals also with the exhibition to public view of any profane, indecent, or obscene representation in a street.

Licensing authorities under the Cinematograph Act, 1909 (s), can require the insertion of a condition that no film exhibited shall be objectionable or indecent (t). [927]

**Prostitution.**—A common prostitute wandering in the public streets or public highway or any place of public resort and behaving in a riotous or indecent manner commits an offence under the Vagrancy Act, 1824 (u). Within the precincts of the University of Oxford, sect. 8 of the Universities Act, 1825 (a), makes it an offence for a common prostitute to wander in any public walk, street, or highway, if she do not give a satisfactory account of herself. Sect. 28 of the Town Police Clauses Act, 1847, already mentioned, adds (where it applies: see above as to this) loitering and importuning passengers for the purpose of prostitution. It is to be observed that under each Act the offence can be committed only in a street (b) (in the extended meaning already explained, which under sect. 81 of the P.H.A. Amendment Act, 1907, applies to both Acts) and only by a common prostitute. Further, the prostitute does not commit an offence unless wandering or loitering in the street or similar place, and (except at Oxford) also behaving in a riotous or indecent manner or importuning passengers. Light is thrown on the meaning of the words "common prostitute" by *R. v. De Munk* (c), though the case arose under a different Act of Parliament. (See also "Solicitation," *infra*.)

A heavy penalty (£10 for first offence and £20 for a subsequent one) may be inflicted upon holders of licences for knowingly permitting their premises to be the resort of reputed prostitutes for purposes other than obtaining refreshment (d). See also the Refreshment Houses Act, 1860 (e), for a similar prohibition. [928]

(o) For cases on indecent publications, see 15 Digest 748—751.

(p) 19 Halsbury's Statutes 339.

(q) Criminal Justice Act, 1925, s. 43; 11 Halsbury's Statutes 420.

(r) 19 Halsbury's Statutes 39, *vide supra*, for extent of this section.

(s) *Ibid.*, 352.

(t) See *Stott v. Gamble*, [1916] 2 K. B. 504; 42 Digest 921, 168.

(u) S. 3; 12 Halsbury's Statutes 913.

(a) 4 Halsbury's Statutes 448.

(b) And, therefore, on a Scottish Act in similar terms, it was decided in *Ford v. Linton* (1870), 6 H. (Ct. of Sess.) 49, that a woman who from her window accosted passengers in the street committed no offence.

(c) [1918] 1 K. B. 337; 15 Digest 850, 9337.

(d) Licensing (Consolidation) Act, 1910, s. 76; 9 Halsbury's Statutes 1023.

(e) S. 32; 9 Halsbury's Statutes 930.



**Ringling Door Bells.**—Sect. 28 of the Town Police Clauses Act, 1847, already mentioned, makes it an offence, punishable by a fine not exceeding 40s. or imprisonment for fourteen days, for any person in a street, in the extended meaning of the word (*f*), wilfully and wantonly to disturb an inhabitant by pulling or ringing any door bell (*g*). [929]

**Riotous Behaviour in Church.**—Riotous, violent or indecent behaviour in a place of religious worship is subject to penalties under sect. 2 of the Ecclesiastical Courts Jurisdiction Act, 1860 (*h*), penalties under which are recoverable summarily. [930]

**Solicitation.**—The limitations on the scope of sect. 3 of the Vagrancy Act, 1824, and the relevant portion of sect. 28 of the Town Police Clauses Act, 1847 (*i*), have been explained under "Prostitution," *ante*. In regard to "behaving in a riotous or indecent manner," which is an essential part of the offence under the former section, see *R. v. De Ruiter* (*k*) and *R. v. Duke* (*l*). These cases show that what is "indecent" is a question of fact, and that mere accosting or solicitation of a man by a woman in the street even for immoral purposes does not of itself amount to indecent behaviour in this context. These statutes are directed against females. A male person who in a public place persistently solicits or importunes for immoral purposes is punishable by six months' imprisonment under sect. 1 of the Vagrancy Act, 1898 (*m*). The essence of the offence under that Act is persistence; a single act of solicitation is not an offence, but it is not material that no person is shown to have been affected by the solicitation (*n*). [931]

**London.**—Most of the statutory enactments creating the offences enumerated above apply equally in London, but it should be noticed that throughout the metropolitan police district provisions substantially similar to those of the Town Police Clauses Act, 1847, exist, in the Metropolitan Police Acts (*o*), while the Town Police Clauses Act, 1847, and the P.H.A. Amendment Act, 1907, do not apply to the County of London.

The Metropolitan Police Act, 1829, sect. 7 (*p*), provides that a police officer may apprehend all idle and disorderly persons disturbing the peace or whom he has cause to suspect of any evil designs. The Metropolitan Police Act, 1839, sect. 44 (*q*), provides a penalty for permitting drunkenness, disorderly conduct or gaming, or prostitutes or persons of notoriously bad character to meet, in any house, shop, room, or place of public resort where refreshments are sold or consumed. Sect. 47 imposes a penalty for the keeping of places used for bear-baiting, cock-fighting, etc., and on persons found therein; sect. 48 gives power to the police to enter gaming houses, and imposes a penalty on keepers of gaming houses and persons found therein; sect. 54 makes

(*f*) P.H.A. Amendment Act, 1907, s. 81, *ante*.

(*g*) Town Police Clauses Act, 1847, s. 28; 19 Halsbury's Statutes 40.

(*h*) 6 Halsbury's Statutes 197.

(*i*) References under "Prostitution," *ante*.

(*k*) (1880), 44 J. P. 90.

(*l*) (1900), 73 J. P. 88; 87 Digest 362, 1634.

(*m*) 4 Halsbury's Statutes 722.

(*n*) *Horton v. Mead*, [1913] 1 K. B. 154; 15 Digest 752, 8108.

(*o*) 19 Halsbury's Statutes: *vide* index to that volume, under "Streets."

(*p*) 12 Halsbury's Statutes 746.

(*q*) 9 Halsbury's Statutes 917.

provision as to nuisances in thoroughfares (see title "HIGHWAY NUISANCES"); sect. 55 provides that cannon, etc., are not to be discharged within three hundred yards of a dwelling-house to the annoyance of any inhabitant thereof (see title FIREWORKS); sect. 58 provides a penalty for drunkenness and riotous or indecent behaviour; sect. 66 gives power to the police or persons aggrieved to apprehend offenders under the Act. Occasionally the differences between these Acts and those elsewhere in force are important. Thus under "Prostitution" (*vide supra*) it will be found in the metropolitan police district that a common prostitute commits an offence not merely by the conduct set out in sect. 3 of the Vagrancy Act, 1824, and sect. 28 of the Town Police Clauses Act, 1847, but also by loitering or being in any thoroughfare or public place for the purpose of prostitution or solicitation to the annoyance of inhabitants or passengers. Here annoyance is the essence of the offence (and it is doubtful whether the annoyance can, as in *Brabham v. Wookey*, *supra*, be merely that of police officers passing through the thoroughfare on duty), in contrast to the Town Police Clauses Act, 1847, where mere importuning, even though the person importuned be not annoyed, is enough. On the other hand, if annoyance be proved, the mere fact of the prostitute's being in the thoroughfare or public place for the purpose of prostitution or solicitation is an offence, even though she do not (in the words of the Vagrancy Act, 1824, or the Town Police Clauses Act, 1847), wander or loiter. For purposes of practical administration, therefore, and of determining whether decisions given on one Act govern proceedings under another, the exact language must be compared. [1932]

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## OFFENSIVE EXHIBITION

*See OFFENSIVE BEHAVIOUR.*

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## OFFENSIVE TRADES

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*See also titles :*

MODEL BYE-LAWS AND CLAUSES ;  
 NUISANCES ;  
 RAG AND BONE DEALER ;

SLAUGHTER-HOUSES AND KNACKERS'  
 YARDS ;  
 TRADE EFFLUENTS.

**Introductory.**—Many trades may be carried on in such a way as to be obnoxious and to constitute an actionable nuisance for which a person adversely affected, including a local authority, will have a remedy at common law. The consent of a local authority, in virtue of the provisions discussed below, to the establishment of an offensive trade does not legalise what would otherwise be illegal, or deprive a person aggrieved of his remedy at common law in respect of an actionable wrong. See title NUISANCES. The P.H.As. single out certain noxious trades for special control by the local authority, these being termed Offensive Trades, which has thus a special meaning, which will be defined under the next heading. Many such trades, as carried on to-day, are inodorous and in no way affect the amenities of the locality; other trades such as brick-making and cement-making are not "offensive," but may be so carried on as to be actionable nuisances. [983]

**Definition of Offensive Trade.**—An offensive trade is defined in sect. 107 of the P.H.A., 1936 (a), as being one of the trades specified, namely, blood boiler, blood drier, bone boiler, fat extractor, fat melter, fellmonger, glue maker, gut scraper, rag and bone dealer, size maker, soap boiler, tallow melter or tripe boiler, or any other trade, business or manufacture which, by virtue of an order made and confirmed under sect. 51 of the P.H.A. Amendment Act, 1907 (b), was immediately before October 1, 1937, an offensive trade in the area, or which the local authority have by order confirmed by the Minister subsequently declared to be an offensive trade in the area. The general words "any other noxious or offensive trade" which appeared in sect. 112 of the P.H.A., 1875 (c), have disappeared. It follows that, although the list of offensive trades in the Act is longer than in the Act of 1875, local authorities now have no control under the P.H.As. over the establishment of trades which have not been declared to be offensive trades in their districts. Where a local authority desire to declare

(a) 29 Halsbury's Statutes 403.  
 (c) *Ibid.*, 670.

(b) 13 Halsbury's Statutes 930.

any trade to be an "offensive trade" they should make a declaratory order (d) to that effect and submit it to the Minister of Health for confirmation. Unless a trade is well recognised as offensive, the Minister requires to be satisfied that it may properly be brought within the provisions of the Act. Before confirming any such order, he requires that it shall have been advertised in one or more local newspapers at least fourteen days before the application for confirmation is made, and sect. 107 of the Act of 1936 requires also that notice of intention to apply for confirmation of an order shall be published in the *London Gazette*.

In addition to the trades mentioned above the following have been included as offensive trades in declaratory orders confirmed by the Local Government Board or by the Minister of Health in one or more areas: blood-albumen maker, bone burner, bone steamer, dealer in blood or other putrescible animal products, dealer in hides, skins and fats, fish-skin dresser, fish curer (not carried on by a fishmonger, as subsidiary to his trade or business as a fishmonger), fish-oil manufacturer, manure manufacturer when trade not carried on at chemical manure works within the meaning of the Alkali, etc., Works Regulation Act, 1906 (e), animal charcoal manufacturer, candle maker, manufacturer of poultry meals comprising fish refuse, parchment maker, chitterling boiler, and skin-drier. [1984]

**Fish Frying.**—An important change in the law relating to the trade of fish-frier is made by the P.H.A., 1936. This trade had been frequently included in declaratory orders under sect. 51 of the P.H.A. Amendment Act, 1907, which corresponded to the provision authorising declaratory orders in sect. 107 of the Act of 1936, but in or about 1923 the Minister of Health reconsidered the matter, and departed from the practice which from early years after 1907 had been followed by his predecessors. In a memorandum prefixed to the model bye-laws (f) the Minister stated that he was reluctant to agree to an order affecting this trade unless the local authority could show that other powers were insufficient. Since fishing is an industry of primary national importance, the Minister considered that a local authority should think seriously before proposing to make an order declaring the trade of a fish-frier an offensive trade—remembering that the fishing industry ought not avoidably to be hampered by artificial difficulties in disposing of its products. He considered also that to classify as "offensive" any trade dealing in food was a drastic step, which should not be taken unless the trade was likely to be carried on in the district in a truly unsatisfactory manner. In their Second Report, the Local Government and Public Health Consolidation Committee accept the view that the trade of fish frying is not necessarily offensive, and can be regulated sufficiently by bye-laws. Effect is given to their recommendation in sect. 108 of the Act of 1936. This empowers urban authorities to make bye-laws with respect to the trade, which bye-laws may apply both to premises and (a new power) to businesses carried on in streets. Any orders declaring the trade of fish frying to be an offensive trade will, by sect. 107 of the Act, cease to have effect at the

(d) For a model form of order, see p. 7 of Model Bye-Laws issued by the M. of H. Series XVI., "Offensive Trades," 1932.

(e) 18 Halsbury's Statutes 894.

(f) Edition of 1932. The Model Bye-Laws will be revised and re-issued before the P.H.A., 1936, comes into operation.

expiration of three years from October 1, 1937, except for the purpose of any planning scheme (see below as to this), but this does not prejudice the making and confirmation of a new order with respect to the trade, if the local authority can produce evidence of special local conditions to overcome the Minister's objections above stated. [1935]

The Minister has declined to approve proposals to declare knackers' yards to be offensive trades, since other means exist for their control (g), and also manure works which come within the definition of "chemical manure works" in the First Schedule of the Alkali, etc., Works Regulation Act, 1906 (h). A small-pox hospital is not an offensive trade within the definition (i). [1936]

**The Establishment of an Offensive Trade.**—By sect. 107 of the P.H.A., 1936 (j), no person may establish an offensive trade in a borough, urban district, or a rural district or contributory place in which sect. 112 of the P.H.A., 1875, was in force on September 30, 1937, unless in either case the consent of the local authority has been obtained. The fine for doing so is one not exceeding £50 in respect of the establishment, and any person carrying on a business so established is liable to a fine not exceeding £5 for every day on which the offence is continued after he has been convicted in respect of the establishment or, where he has not been convicted, after receiving notice from the local authority to discontinue the trade. (For a form of resolution giving consent, see *Encyclopædia of Forms and Precedents* (second ed.), Vol. XII., p. 285.) The offence of establishment is committed when the trade commences and not by the mere erection of the building or premises. None the less the local authority should indicate their objection to the establishment on the earliest possible occasion. The consent of the local authority may be given for a limited time (sub-sect. (3)) and for such extension of the period as may from time to time be granted. There is, however, no authority for other conditions attached to a consent.

Sub-sect. (6) will assist in deciding at what date an offensive trade was established. Thus, if a trade is (a) transferred or extended from the premises on which for the time being it is carried on to other premises; or (b) resumed on the same premises, after having been discontinued for more than eighteen months; or (c) if the premises on which it is carried on are enlarged; the trade is to be deemed to be established for the first time. On the other hand, where (d) the ownership or occupation of the premises is changed; or (e) the building is wholly or partially pulled down or burnt down, and has been rebuilt without an extension of the total floor space; the trade is not to be held to be established for the first time on the premises by reason only of circumstances (d) or (e).

Any person aggrieved by the refusal of a local authority to consent to the establishment of a trade, or by any time limit, or by refusal to extend a time limit, may appeal to a court of summary jurisdiction (sub-sect. (4)). The Minister of Health stated in connection with sect. 7 of the P.H.A. Amendment Act, 1907, that he considered it highly desirable that any notice refusing consent, or fixing a limit, should

(g) See title *SLAUGHTER-HOUSES AND KNACKERS' YARDS*.

(h) 15 Halsbury's Statutes 904.

(i) *Withington Local Board v. Manchester Corpn.*, [1898] 2 Ch. 19; 57 J. P. 340, C. A.; 36 Digest 175, 210.

(j) 29 Halsbury's Statutes 403.

indicate clearly that there was this right of appeal. The notice should be accompanied by a statement of the reasons for the decision, so that the applicant may be in a position to estimate the chance of success upon appeal. (See the memoranda prefixed to the model bye-laws.) (k) [1937]

**Control by Bye-Laws.**—The council of a borough or district, and of a rural district in which the powers of sect. 113 of the P.H.A., 1875 (l), were in force either in the whole district or in any contributory place in the district, may make bye-laws with respect to any offensive trade established on premises or in streets within their district or part of their district. Bye-laws made under the corresponding provisions of any enactment repealed by the P.H.A., 1936, or of any such enactment as amended or extended by a local Act will cease to have effect on July 31, 1939, while bye-laws made under the Act of 1936 will cease to have effect at the expiration of ten years from the date on which they were made. The Minister of Health may by order extend the period during which any bye-law is to remain in force.

Notice must be given in the *London Gazette* of intention to apply for confirmation of bye-laws as to offensive trades (sect. 108 (5)). This is additional to the notice required by sect. 250 of the L.G.A., 1933 (m). The bye-law-making power extends only to a business when established, and cannot regulate the structure of the premises or the construction of the plant. The model bye-laws accordingly exclude all structural requirements, and the Minister has always refused to confirm bye-laws dealing with structure if proposed by local authorities. Briefly, the bye-laws will be concerned with the handling of raw materials, with the disposal of effluvia and waste matters, and with the mode of operation. [1938]

**Other Methods of Control.** *Town and Country Planning.*—Offensive trades may be indirectly controlled through the operation of a planning scheme under the Town and Country Planning Act, 1932 (n). For instance, the provisions to be inserted in a scheme with respect to buildings may impose restrictions upon the manner in which buildings may be used (sect. 12). Such a scheme may also prohibit, regulate, and control the deposit or disposal of waste materials and refuse (sect. 11 and Second Schedule).

In the Model Clauses (edition of March, 1937) issued by the Minister of Health for use in the preparation of planning schemes the trades referred to above as offensive trades are included among "special industrial buildings" which may be established only in zones set apart for the purpose. As regards the trades of fish frier and tripe boiler, a note to these Model Clauses in previous editions pointed out that these trades require special consideration, since it is important to avoid interference with the supply of cheap food. It has also to be considered that since the products are for human consumption it is necessary that the trades should be carried on in healthy surroundings. For this reason it may be desirable to make special provision for their entry, subject to the consent of the council, into shopping areas, and, in some cases, into residential areas.

Provision is also made for the substitution of the provisions of the scheme, with regard to consent to the erection and use of buildings for trade or industry and appeals, for the provisions of the P.H.A.s. [1939]

(k) See note (f), ante.

(m) 20 Halsbury's Statutes 440.

(l) 13 Halsbury's Statutes 671.

(n) 25 Halsbury's Statutes 470.

London.—Sect. 140 of the P.H. (London) Act, 1936 (o), provides penalties for (a) the establishment of the following businesses—blood boiler, bone boiler, manure manufacturer, soap boiler, tallow melter or knacker; (b) the establishment without the consent of the sanitary authority of the following businesses: fellmonger, tripe boiler, slaughterer, or any other business which the county council, or as respects the City, the City corporation, may declare by order confirmed by the Minister of Health and published in the *London Gazette*, to be an offensive business. The following have been so declared: gut scraper, fat melter or fat extractor, glue and size manufacturer, dresser of fur skins, catgut maker, animal charcoal manufacturer, dresser of fish skins, and slaughterer of poultry.

The section further provides that the aforementioned provision shall not render any person liable to a fine for establishing with the consent of the sanitary authority, or carrying on, the business of soap boiler if and so long as that business is a business in which tallow or any animal fat or oil other than olein is not used by admixture with alkali for the production of soap. The section also makes provision for public notice of any application for consent and for the hearing of objections. A business is to be deemed to be established anew not only if it is established newly but also if it is removed from one set of premises to another, or if it is renewed on the same set of premises after having been discontinued for a period of nine months or more, or if any premises on which it is being carried on are enlarged without the sanction of the sanitary authority; but a change of ownership or reconstruction of demolished premises does not constitute establishing anew (sect. 140 (5)). Consent to the establishment of any business may be given subject to conditions (sect. 140 (6)) and may be for a limited period (sect. 141 (1)).

The county council and the City corporation may make bye-laws for regulating the conduct of any business specified in sect. 140, the structure of the premises on which the business is being carried on, and the mode in which application for consent to establishment is made (sect. 142 (1)).

They may also, under sect. 140, make bye-laws for regulating the conduct of the business of a vendor of fried fish (p), a fish-curer or a rag and bone dealer, and with respect to the premises in or upon which any such business is carried on, and the apparatus, utensils and appliances used for the purpose of, or in connection with, the business.

The bye-laws made by the county council are enforceable by the metropolitan borough councils.

Sect. 137 makes provision as to nuisances arising from offensive trades. The removal of refuse by a sanitary authority is (sect. 138) an offensive trade for the purposes of this section. Proceedings may be taken in respect of nuisances occurring outside London (para. 22 of the Fifth Schedule to the Act of 1936).

The London Building Act, 1930, Part XI. (g), contains provision with regard to the erection of buildings near dangerous or noxious businesses, and with regard to the establishment of such businesses, see title LONDON BUILDING. [940]

(o) 26 Geo. 5 and 1 Edw. 8, c. 50.

(p) Note that this phrase, which in London is statutory, is different from the expression "trade or business of fish frying" used in s. 108 of the P.H.A., 1936.

(q) Ss. 143—145; 23 Halsbury's Statutes 292—294.

# OFFICE, COMPENSATION FOR LOSS OF

See COMPENSATION FOR LOSS OF OFFICE.

## OFFICE OF WORKS

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See also title : ANCIENT MONUMENTS AND BUILDINGS.

**Introductory.**—The Office of Works or Department of Works and Public Buildings, was constituted under the Crown Lands Act, 1851, by which the First Commissioner of Woods, Forests and Works then in office became the First Commissioner of Works (*a*). The offices have since been separated. The First Commissioner is the responsible Minister, commonly though not invariably a member of the Cabinet. The other commissioners, *ex officio*, who receive no special salaries, and ordinarily do not participate in the business of the office, are the principal Secretaries of State and the President of the Board of Trade. The body is a corporation under the name of "The Commissioners of H.M.'s Works and Public Buildings," having perpetual succession and a common seal, and acts of the Commissioners are valid if done by the First Commissioner or any two of them.

Their duties are to take and hold all lands and hereditaments vested in them by statute or purchase; to convey, assign, lease or otherwise dispose of such lands, and to enter into covenants or agreements respecting the same. Furthermore, they possess powers and duties in relation to certain royal parks, gardens and possessions formerly exercised by the Commissioners of Woods. They have power to erect statues, to refuse consent to the erection of statues by others, and to accept the transfer of statues in any public place, including any street, square, court or other like place where there is a public right of thoroughfare within the metropolitan police district (*b*), while under various Acts the control of certain public buildings is vested in them. Finally, for the purpose of discharging their duties mentioned above, they are empowered to appoint architects, surveyors and other officers, whom they consider necessary, subject to the approval of the Treasury (*c*). Further, as to the manner in which the powers and duties of the Commissioners of H.M.'s Works and Public Buildings have been

(*a*) Crown Lands Act, 1851, s. 1; 3 Halsbury's Statutes 290.

(*b*) Public Statutes (Metropolis) Act, 1854, ss. 1, 2; 11 Halsbury's Statutes 887.

(*c*) Crown Lands Act, 1851, s. 16; 3 Halsbury's Statutes 285.



derived from various enactments, see Halsbury's Laws of England, Hailsham Ed., Vol. VI., pp. 746 *et seq.* [941]

**Contact between the Office of Works and Local Authorities.**—(i.) The Commissioners of Works may convey to a bridge authority (*d*) willing and able to accept, any bridge under their management, including land necessary for widening or improving the same, including approaches to, and abutments of a bridge (*e*). A "bridge authority" means any local authority having the duty of the care and maintenance of bridges. (ii.) The Commissioners of Works are enabled to agree with local authorities for the transfer of lands under their control as open spaces, and the provisions of the Open Spaces Acts, 1877–1906, are to apply, subject to any conditions or reservations provided for in the deed of transfer. The control and management of Victoria, Battersea and Kennington Parks, for example, were transferred in 1887 from the Commissioners of Works to, and are now vested in, the L.C.C. (iii.) Under sect. 144 of the Housing Act, 1936 (*f*), the Commissioners of Works must be consulted where any land proposed to be acquired or appropriated under that Act is situate within a distance prescribed by the Minister, after consultation with the commissioners, from any of the royal palaces or parks. The Minister before authorising the acquisition or appropriation of the land, or the raising of any loan for the purpose, will take into consideration any recommendations received from the commissioners with reference to the proposal. (iv.) The Commissioners of Works are the central authority under the Ancient Monuments Acts, 1913 and 1931 (*g*). The Ancient Monuments Board, an advisory body consisting of members representing certain societies and other bodies, gives advice without charge regarding the treatment of Ancient Monuments (see title ANCIENT MONUMENTS AND BUILDINGS). The commissioners themselves may prepare and confirm preservation schemes for areas adjacent to a monument, and the Acts provide for notices and compensation to persons whose property is injuriously affected, and for notices to local authorities affected (*h*). The commissioners are empowered to defray part or the whole of the expenses incurred by a local authority in connection with an ancient monument (*i*). (v.) By sect. 17 of the Town and Country Planning Act, 1932 (*k*), it is provided, with regard to orders in respect of the preservation of buildings of special architectural or historic interest, that the Minister shall consult with the Commissioners of Works before deciding whether the order shall take effect immediately. Where an appeal is made under sub-sect. (3) of the same section, the Minister must consult with the Commissioner of Works, and by sub-sect. (5), nothing in sect. 17 is to affect any powers of the commissioners under any enactment in force applying to ancient monuments. [942]

(*d*) See title BRIDGES, Vol. II., p. 248.

(*e*) Crown Lands Act, 1906, s. 6; 3 Halsbury's Statutes 328.

(*f*) 25 Halsbury's Statutes 663.

(*g*) Ancient Monuments Consolidation and Amendment Act, 1913; 12 Halsbury's Statutes 392; Ancient Monuments Act, 1931; 24 Halsbury's Statutes 296.

(*h*) Ancient Monuments Act, 1931, s. 1, Sched. I; 24 Halsbury's Statutes 305.

(*i*) Further, as to this, refer to title ANCIENT MONUMENTS AND BUILDINGS.

(*k*) 25 Halsbury's Statutes 490, 491.

## OFFICERS, APPOINTMENT AND DISMISSAL OF

*See APPOINTMENT AND DISMISSAL OF OFFICERS.*

## OFFICERS, DUTIES AND POWERS OF

*See DUTIES AND POWERS OF OFFICERS.*

## OFFICERS OF LOCAL AUTHORITIES

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**Introduction.**—This title gives, in respect of the authorities specified, a list of officers whose appointment is (i) legally required, (ii) usually made and (iii) occasionally made. Questions of recruitment and status of officers will be found in the title **STAFF**. The position of individual officers will be found fully set out in the relevant titles throughout the work, *e.g.* **TOWN CLERK**, **MEDICAL OFFICER OF HEALTH**, **ELECTRICAL ENGINEER**. Reference should be made to **APPOINTMENT AND DISMISSAL OF OFFICERS** and **GARANTEE OF OFFICERS** for the standpoint of the local authority and to **COMPENSATION FOR LOSS OF OFFICE**, **CORRUPTION IN OFFICE**, **DUTIES AND POWERS OF OFFICERS**, and **TRANSFER OF OFFICERS** for the standpoint of the officers.

In addition to the officers whose appointment is specifically required by the L.G.A., 1933, sects. 105—107 of the Act (a) give power to the councils of counties, boroughs and districts respectively to appoint “such other officers as the council think necessary for the efficient discharge of the functions of the council.” [943]

**Appointments by County Councils.**—*Legally Required by the L.G.A., 1933.*—Clerk of the county council (b); county treasurer (c); county M.O.H. (d); county surveyor (e). [944]

(a) 26 Halsbury's Statutes 361—362.

(b) S. 98; 26 Halsbury's Statutes 358.

(d) S. 108; *ibid.*

(c) S. 102; *ibid.*, 360.

(e) S. 104; *ibid.*, 361.

*Legally Required by other Acts.*—Public analyst (*f*); agricultural analyst (*g*); chaplains, medical officers, superintendents, clerks and treasurers of mental hospitals (appointed by the visiting committee) and institutions maintained by the authority under the Mental Treatment Act, 1930 (*h*); chief constable (*i*); clerk of the peace (*k*); coroners (*l*); inspectors of weights and measures (*m*); registrars of births, deaths and marriages (*n*); registration officer (*o*); Shops Acts inspectors (*p*). Under Part IX. of the Public Assistance Order, 1930 (*q*), the county council are required to appoint senior poor law officers. The mandatory appointments are: a public assistance officer, who may be the clerk to the council; a district medical officer for every medical relief district; a relieving officer for every general relief district; a master, matron, medical officer and chaplain at every institution, and, if it contains not less than 100 beds for sick inmates, a superintendent nurse; a medical superintendent, matron, steward and chaplain at every hospital; a superintendent or matron, medical officer and chaplain and (when requisite) schoolmaster and schoolmistress, at every children's home; superintendent, medical officer, chaplain and (when requisite) matron, at every separate casual ward. [945]

*Usually Appointed.*—The above-mentioned officers are the only ones whose appointment is compulsory by statute, but a large number of statutes give permissive powers to county councils to appoint officers necessary for the proper discharge of their functions. In addition a general power to appoint such officers is now given by sect. 105 (1) of the L.G.A., 1933 (*r*). The following are usually appointed and the relevant titles in this work should be consulted for the details of the appointment and the duties of the officers: chaplains in public health institutions; county valuer; director of education; financial officer (who may hold the statutory title of treasurer); inspectors of food and drugs; librarian; sanitary inspectors; teachers; tuberculosis officer; veterinary inspector. [946]

*Occasionally Appointed.*—County councils occasionally appoint the following officers: county architect, county land agent; gas examiner; public control officer; rats officer. [947]

(*f*) Food and Drugs (Adulteration) Act, 1928, s. 15; 8 Halsbury's Statutes 804.

(*g*) Fertilisers and Feeding Stuffs Act, 1926, s. 11; 1 Halsbury's Statutes 147.

(*h*) Lunacy Act, 1890, s. 276; 11 Halsbury's Statutes 111; Mental Treatment Act, 1930, s. 6 (4); 23 Halsbury's Statutes 162.

(*i*) Appointed by the Standing Joint Committees with the approval of the Secretary of State; County Police Act, 1839, s. 4; 12 Halsbury's Statutes 776, as amended by the L.G.A., 1888, ss. 9 and 30; 10 Halsbury's Statutes 692, 708.

(*k*) L.G.A., 1933, s. 98; 26 Halsbury's Statutes 358.

(*l*) L.G.A., 1888, s. 5; 10 Halsbury's Statutes 600; Coroners (Amendment) Act, 1926, s. 2; 8 Halsbury's Statutes 781.

(*m*) Weights and Measures Act, 1878, s. 43; 20 Halsbury's Statutes 370.

(*n*) L.G.A., 1929, ss. 21—28; 10 Halsbury's Statutes 898—902.

(*o*) Representation of the People Act, 1918, s. 12; 7 Halsbury's Statutes 555.

(*p*) Shops Act, 1912, s. 13; 8 Halsbury's Statutes 621. With the approval of the Secretary of State, the county council may make arrangements with rural district councils and with councils of urban districts having a population of less than 20,000 to act as their agents in the administration of the Act. Urban districts having a population of more than 20,000 are themselves local authorities for the purposes of the Act.

(*q*) 12 Halsbury's Statutes 1075.

(*r*) 26 Halsbury's Statutes 361.

**Appointments by County Borough Councils.** *Legally Required by the L.G.A., 1933.*—Auditors (s); M.O.H.; sanitary inspector; surveyor; town clerk; treasurer (t). [948]

*Legally Required by other Acts.*—Analysts (public) (u); analyst (agricultural) (a); chaplain and other officers in mental hospitals, as appointed by county councils (see *supra*); chief constable (where the borough maintains its own police force) (b); inspectors of weights and measures (c); registrars of births, deaths and marriages (d); registration officer (e); senior poor law officers (as for county councils, *supra*); Shops Acts inspectors (f). [949]

*Usually Appointed.*—Cemetery superintendent; chaplain (Mayor's); chaplains in public health institutions; director of education; electrical engineer; gas engineer or manager; housing manager; librarian; market inspector; rating and valuation officer; teachers; transport manager; tuberculosis officer; waterworks manager or engineer. [950]

*Occasionally Appointed.*—Entertainments manager; gas examiner; parks superintendent; publicity officer; rats officer; veterinary inspector. [951]

**Appointments by Non-County Borough Councils.**—The appointments legally required by the L.G.A., 1933, are the same as those for county boroughs. Of the other officers mentioned above under county boroughs, the position in regard to non-county boroughs is the same except that the latter have no power of appointing the following: analysts; chaplains in mental hospitals; chief constable (except where the borough maintains its own police force); registrars of births, deaths and marriages; senior poor law officers; director of education (except where the non-county borough has not less than 10,000 population); tuberculosis officer; gas examiner; rats officer. [952]

**Appointments by Urban and Rural District Councils.**—The appointments legally required by the L.G.A., 1933, are: clerk of the council; M.O.H.; sanitary inspector; surveyor; treasurer (g). Where the population of an urban district exceeds 20,000, the Shops Act, 1912, requires the appointment of an inspector (h). In the larger urban districts similar appointments may sometimes be made to those made in boroughs. [953]

**Appointments by Parish Councils.**—Under sect. 114 of the L.G.A., 1933 (i), a parish council may appoint one of their own number to be clerk without remuneration, or, if no member is so appointed, some other person at a reasonable remuneration. They may appoint one of their own number as treasurer without remuneration. [954]

(s) Except where the district audit system has been adopted. See ss. 237–240; 26 Halsbury's Statutes 433–436.

(t) S. 106; 26 Halsbury's Statutes 361.

(u) Food and Drugs (Adulteration) Act, 1928, s. 15; 8 Halsbury's Statutes 894.

(a) Fertilisers and Feeding Stuffs Act, 1926, s. 11; 1 Halsbury's Statutes 147.

(b) Appointed by the watch committee. Municipal Corpn. Act, 1882, s. 191; 10 Halsbury's Statutes 636. See also title BOROUGH POLICE.

(c) Weights and Measures Act, 1878, s. 43; 20 Halsbury's Statutes 379.

(d) L.G.A., 1929, s. 21; 10 Halsbury's Statutes 898.

(e) Representation of the People Act, 1918, s. 12; 7 Halsbury's Statutes 555.

(f) Shops Act, 1912, s. 13; 8 Halsbury's Statutes 621.

(g) S. 107; 26 Halsbury's Statutes 362.

(h) S. 13; 8 Halsbury's Statutes 621.

(i) 26 Halsbury's Statutes 367.

## CENTRAL CONTROL

" Local authorities are in the main independent in the appointment and management of their officers " (k).

The exceptions to this statement are tabulated briefly below.

Minister exercising control.	Officers affected.	Authorities by whom employed.	Extent of control.
Secretary of State	Clerk of the Peace	County Councils	Clerk or county council may appeal to Secretary of State against salary fixed by quarter sessions (l).
Minister of Health	Analysts—Public	County Councils County Borough Councils	Approval of appointment or dismissal (m).
Do.	Clerk of the County Council	County Councils	Approval of salary and consent to dismissal (n).
Do.	Health and Tuberculosis Visitors	County, County Borough, Non-County Borough and Urban District Councils	Minister prescribes qualifications (o).
Do.	Medical Officers of Health	All authorities except Parish Councils	Minister prescribes qualifications and dismissal requires his approval (p).
Do.	Senior Poor Law Officers	County and County Borough Councils	Minister prescribes qualifications. Appointments and remuneration must be reported to him. Dismissal is either directly by the Minister or with his consent (q).

(k) Departmental Report on Recruitment, etc., of Local Government Officers (The Hadow Report), at p. 9.

(l) L.G. (Clerks) Act, 1931, s. 3; 24 Halsbury's Statutes 242.

(m) Food and Drugs (Adulteration) Act, 1928, s. 15; 8 Halsbury's Statutes 894.

(n) L.G.A., 1923, s. 100; 26 Halsbury's Statutes 358.

(o) L.G.A., 1929, s. 59; 10 Halsbury's Statutes 924.

(p) L.G.A., 1933, ss. 103, 110; 26 Halsbury's Statutes 363, 364.

(q) Poor Law Act, 1930, s. 1; 12 Halsbury's Statutes 968.

Minister exercising control.	Officers affected.	Authorities by whom employed.	Extent of control.
Minister of Health	Sanitary Inspectors	County and Non - County Borough and District Councils	Appointments and remuneration subject to Minister's approval if any part of salary is repayable out of County Fund : dismissal of senior sanitary inspectors requires Minister's approval ( <i>r</i> ).
Minister of Agriculture & Fisheries	Analyst—Agricultural	County and County Borough Councils	Minister approves appointments ( <i>s</i> ).
Minister of Transport	Surveyors	All Authorities responsible for classified roads	Appointment and dismissal are subject to the approval of the Minister if a grant is made towards the Officer's salary ( <i>l</i> ).
Board of Trade	Inspectors of Weights and Measures	County and County Borough and certain Non - County Borough Councils	The Board issue the necessary certificates of qualification ( <i>u</i> ).
Registrar General	Superintendent Registrars, Registrars of Births, Deaths and Marriages	County and County Borough Councils acting as the responsible Council	Approval of appointments and terms and power of dismissal ( <i>o</i> ).

[355]

- (*r*) L.G.A., 1933, ss. 108, 110 : 26 Halsbury's Statutes 363, 364.  
 (*s*) Fertilisers and Feeding Stuffs Act, 1926, s. 11 : 1 Halsbury's Statutes 147.  
 (*u*) M. of T. Act, 1919, s. 17 (2) : 3 Halsbury's Statutes 433 : L.G.A., 1933, s. 124 : 26 Halsbury's Statutes 372.  
 (*o*) Weights and Measures Act, 1904, s. 8 : 20 Halsbury's Statutes 410.  
 (*l*) L.G.A., 1929, s. 22 : 10 Halsbury's Statutes 899.

**Deputies.**—In respect of any appointment which the local authority are required to make under the L.G.A., 1933, they are permitted, by sect. 115 (*b*), to appoint a deputy to have all the functions of the holder of the office when the latter is unable to act or when the office is vacant. A person cannot be appointed a deputy M.O.H., or a deputy sanitary inspector without the consent of the Minister of Health (*b*). [956]

**London.**—For particulars of the principal officers appointed by the L.C.C. and the City corporation, see titles LONDON COUNTY COUNCIL and CITY OF LONDON.

Metropolitan borough councils appoint officers as follows: (1) A clerk, who shall be called the town clerk (*c*); (2) a deputy clerk who may be appointed in the case of illness or absence of the town clerk to hold office during the pleasure of the council (*d*); (3) as the sanitary authority for the borough, the borough council are required to appoint a medical officer or officers of health and an adequate number of sanitary inspectors (*e*); (4) borough treasurer (*f*); (5) borough surveyor (*g*); (6) a librarian (*h*); (7) special officers where the borough council carries on any special undertaking, *e.g.* electrical engineer; (8) officers for the purpose of carrying out duties imposed by Public General Acts, *e.g.* Food and Drugs Acts, Registration Acts, Vaccination Acts (as to which see appropriate titles). [957]

(*b*) 26 Halsbury's Statutes 367.

(*c*) Metropolis Management Act, 1855, s. 62; 11 Halsbury's Statutes 803; London Government Act, 1899, s. 4 (1); *ibid.*, 1227.

(*d*) London Government Act, 1899, s. 25; *ibid.*, 1238.

(*e*) P.H. (London) Act, 1936, ss. 8 and 9.

(*f*) Metropolis Management Act, 1855, s. 62; 11 Halsbury's Statutes 803.

(*g*) *Ibid.*

(*h*) Public Libraries Acts; 13 Halsbury's Statutes 503 *et seq.*

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## OFFICERS, TRANSFERRED

*See* TRANSFER OF OFFICERS.

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## OFFICES AND BUILDINGS

*See* CORPORATE BUILDINGS; OFFICIAL BUILDINGS.

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## OFFICIAL ANALYST

*See* ANALYST.

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[END OF VOL. IX.]

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